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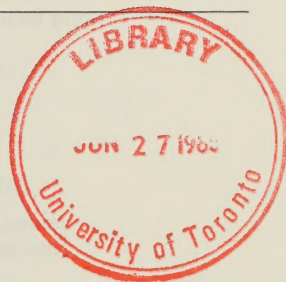
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Bill 29

An Act to revise the Mining Act

The Hon. M. Harris
Minister of Natural Resources

1st Reading June 18th, 1985
2nd Reading
3rd Reading
Royal Assent



EXPLANATORY NOTES

The purpose of the Bill is to simplify, modernize and standardize the regulation of mineral exploration and development. Many of the changes are of an administrative nature and some of the detail contained in the current Act will be dealt with in the new regulations.

The major significant changes are as follows:

1. Provision is made for a lifetime prospector's licence with the elimination of annual renewals.
2. Perimeter staking of a block of claims is permitted to reduce cost of staking.
3. Assessment work requirements are expressed in terms of dollars spent rather than days worked.
4. Holders of mining claims doing exploratory work are required to furnish notice to occupants of surface rights of their intention to perform assessment work.
5. The option of continuing assessment work rather than applying for a lease is provided.
6. Mining recorders are given authority to extend time to perform assessment work and to relieve claims from forfeiture.
7. The potential hazard of inactive mines are recognized and measures are introduced to prevent injury.



Bill 29

1985

An Act to revise the Mining Act

CONTENTS

Section

1. Definitions
2. Purpose

PART I

ADMINISTRATION AND RECORDS

3. Administration by Minister
4. Mining divisions
5. Appointment of recorder
6. Recording office
7. Inspector
8. Commissioners for affidavits
9. Employees of Ministry prohibited from staking, etc.
10. Evidence of records or documents
11. Filing constitutes notice
12. Instrument deemed to be recorded when filed
13. Priority of interest
14. Recording documents
15. Anniversary day unchanged
16. Writs of execution
17. Address for service
18. Correction of instrument
19. Time expiring on a Saturday
20. Power to extend time

PART II

PROSPECTING, STAKING AND RECORDING MINING CLAIMS

21. Prospector's licence required
22. Suspension of licence
23. Entering on land
24. Crown land eligible for prospecting
25. Crown land eligible for staking
26. Crop bearing land
27. Staking around exempt land
28. Where forfeiture, termination or surrender
29. Agricultural designation
30. Areas requiring protection
31. Townsites on unpatented claims

Section

32. Withdrawing or reopening land
33. Size of mining claim
34. Tags
35. Application to record staking
36. Substantial compliance
37. Recorder may order alterations
38. Improper description of area
39. Restricted travel zone
40. Where consent required to record
41. Time of recording claim
42. Recording in another name
43. Failure to file staking
44. Mining claim number
45. Death of staker or holder
46. Re-identification of boundary lines
47. Mining claim recorded in wrong division
48. Claim in more than one division
49. Invalid claims
50. Recording of disputes
51. Certificate of record
52. Certificate conclusive evidence
53. Free assays
54. Limited rights of claim holders
55. Right of access
56. Municipal tax exemption
57. Placer deposit
58. Permission to test minerals
59. Enforcing interest acquired prior to staking
60. Inspection by recorder
61. Improper use of land
62. Error by Ministry

PART III

ASSESSMENT WORK

63. Assessment work-time period
64. Prospecting, geophysical and geochemical work
65. No assessment work prior to staking

Section

- 66. Right to do ground assessment work
- 67. Excess work
- 68. Work on adjoining claims
- 69. Work on leased or patented land
- 70. Proportionate contribution of work
- 71. Default in payment for work
- 72. Report of technical assessment work
- 73. Work prohibited by *Forest Fire Prevention Act*
- 74. Extension of time—late filing assessment work
- 75. Extension of time—illness
- 76. Certificate of performance of work

PART IV

ABANDONMENT, SURRENDER
AND FORFEITURE OF MINING
CLAIMS

- 77. Application to unpatented claims
- 78. Abandonment of claim
- 79. Forfeiture
- 80. Forfeiture for fraud, etc.
- 81. Cancelled claim
- 82. Relief from forfeiture
- 83. Order by recorder—re forfeiture
- 84. Order by Commissioner—re forfeiture

PART V

LEASES, LICENCES OF
OCCUPATION AND
EXPLORATORY LICENCES OF
OCCUPATION

- 85. Right to lease of claim
- 86. Rental
- 87. Term of lease
- 88. Renewals
- 89. Reservations in lease
- 90. Survey
- 91. Where area not as prescribed
- 92. Fractions
- 93. Where area exceeds area prescribed
- 94. Summer resort parcel
- 95. Access granted by lease
- 96. Lease under previous Act
- 97. Lease of surface rights for tailings, etc.
- 98. Lease void where land used other than for mining purposes
- 99. Right to convert to patent
- 100. Exploratory licence of occupation

Section

- 101. Licence of occupation
- 102. Licences of occupation issued under previous Acts
- 103. Claim for rent payment by co-lessee or co-licensee
- 104. Special leases and patents
- 105. Reinstatement of lease

PART VI

SURFACE RIGHTS AND
COMPENSATION FOR DAMAGE

- 106. Compensation for surface rights damage
- 107. Claim holder—compensation for damage
- 108. Compensation
- 109. Right over other land conferred by Commissioner

PART VII

QUARRY PERMITS

- 110. Quarry permit required
- 111. Permit issued by Minister
- 112. Classes of permits
- 113. Cancellation, etc., of permit
- 114. Immediate suspension of operations
- 115. Notice of decision
- 116. Right to continue operations
- 117. Royalty payment
- 118. Security as guarantee
- 119. Records
- 120. Returns
- 121. Right to stake claim

PART VIII

HEARINGS AND APPEALS

- 122. Recorder to decide matter in first instance
- 123. Appeal to Commissioner
- 124. Hearing by Commissioner
- 125. Interlocutory applications
- 126. Directions of Commissioner re proceedings
- 127. Expert assistance
- 128. Commissioner may call for evidence and view property
- 129. Disclosure of evidence to parties
- 130. Decision on the merits
- 131. Security for costs
- 132. Costs
- 133. Oral decisions
- 134. Orders to be written
- 135. Appeal to Divisional Court
- 136. Use of court rooms, etc.
- 137. Recording of evidence
- 138. Notice of interest
- 139. Notice of status in question

Section

- 140. Effect of notice
- 141. Order vacating

PART IX

HAZARDOUS LANDS

- 142. Definitions
- 143. District mine inspector
- 144. Protective measures
- 145. Designation of inactive mine
- 146. Direction to take protective measures
- 147. Protective measures by Minister
- 148. Retaining protection
- 149. Certificate that requirements met
- 150. Designation as limited use land
- 151. Limited use land restrictions
- 152. Examination of documentary evidence
- 153. Designation not regulation under *Regulations Act*
- 154. Offence

PART X

MINING LAND TAX

- 155. Definitions
- 156. Liability for tax
- 157. Exemptions from tax by Minister
- 158. Tax roll
- 159. Registration of notice of liability
- 160. Determining liability for tax
- 161. Penalty for default
- 162. Arrears under previous Act
- 163. Special lien and priority of the tax
- 164. Right of action for tax
- 165. Tax arrears
- 166. Declaration of forfeiture
- 167. Claim for tax payment by co-owner

PART XI

REFINERIES

- 168. Definitions
- 169. Refinery licence required
- 170. Issue of refinery licence
- 171. Reference to Commissioner for hearing and report
- 172. Use of refinery
- 173. Inquiry by Commissioner
- 174. Penalty

Section

PART XII
GENERAL

- 175. Lien for wages
- 176. Corporate land forfeited to Crown
- 177. Lands and easements revert to Crown
- 178. Administration of reverted land or rights
- 179. Mineral rights under roads
- 180. Statistical returns
- 181. All minerals to be treated in Canada
- 182. Conditions under which trees may be cut
- 183. Right to remove property
- 184. Drill core and splits to be kept
- 185. Stabilization of tailings
- 186. Offences
- 187. Prosecutions
- 188. Regulations

PART XIII

SALT SOLUTION MINING AND
STORAGE FACILITIES

- 189. Definitions
- 190. Permit required
- 191. Permit issued by Minister
- 192. Refusal to issue permit
- 193. Suspension or cancellation of permit
- 194. Immediate suspension of operations
- 195. Proposal to refuse, suspend or cancel
- 196. Permits subject to conditions
- 197. Security as guarantee
- 198. Rehabilitation by permit holder
- 199. Report of spills, leaks
- 200. Transfer

PART XIV

TRANSITION

- 201. Prospector's licence
- 202. Tags
- 203. Assessment work credits
- 204. Previous orders
- 205. Extending time to apply for lease
- 206. Old leases transferrable
- 207. Repeal
- 208. Commencement
- 209. Short title

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Definitions

1. In this Act,

“anniversary date”, when referring to a mining claim, means the date that occurs at annual intervals after the recording of a mining claim or a merger under subsection 90 (4) or such other date as may result by the application of subsection 15 (2);

“Commissioner” means the Mining and Lands Commissioner;

“Crown” means the Crown in right of Ontario;

“Crown land” means land, the surface rights, mining rights or the mining and surface rights of which are unpatented but does not include,

(a) land in the actual use or occupation of the Crown, the Crown in right of Canada or of a department of the Government of Canada or a ministry of the Government of Ontario,

(b) land the use of which is withdrawn or set apart or appropriated for a public purpose, or

(c) land held by a ministry of the Government of Ontario;

“Director” means the Director of the Land Management Branch of the Ministry;

“file” means the deposit and payment of any prescribed fee at the recording office of any document required or permitted to be submitted to a recorder under this Act and “filed” and “filing” have corresponding meanings;

“holder”, when referring to the holder of an unpatented mining claim or to the holder of a quarry permit issued under this Act, means the holder of record;

“land” includes an interest in land;

“lease” means a lease issued under this Act or a predecessor of this Act but does not include a lease referred to in section 96 (lease under previous Act);

“mine”, when used as a noun, includes,

- (a) any opening or excavation in or working of the ground, for the purpose of winning, opening up or proving any mineral or mineral-bearing substance,
- (b) any mineral deposit, stratum or place where mining is or may be carried on,
- (c) all ways, works, machinery, plant, buildings and premises below or above ground belonging to or used in connection with a mine,
- (d) any excavation or opening of the ground made for the purpose of searching for or removal of minerals, rock or stratum,
- (e) any roasting or smelting furnace, concentrator, mill, work or place used for or in connection with washing, crushing, sifting, drying, oxidizing, reducing, leaching, roasting, smelting, refining, treating or research on any mineral-bearing substances, and
- (f) a quarry;

“mine”, when used as a verb, and “mining” include any mode or method of working whereby earth, rock, stratum, stone or mineral-bearing substance may be disturbed, removed, washed, sifted, dried, reduced, leached, roasted, smelted, refined, oxidized, crushed or dealt with for the purpose of obtaining any mineral therefrom, whether it has been previously disturbed or not, and the operation of a quarry;

“minerals” means all naturally occurring metallic and non-metallic minerals including natural gas, petroleum, coal, quarry material, sand and gravel, gold, silver, all rare and precious metals, salt and peat;

“mining claim” means a parcel of land, including land under water, that has been staked in accordance with this Act and the regulations;

“mining land” means,

- (a) land of which the mining rights have been staked and recorded as a mining claim or land of which the surface rights or the mining rights or the mining rights and surface rights have been patented or leased or held under a licence of occupation under or by authority of a statute, regulation or order in council for use for mining purposes, and

(b) land used or intended to be used for mining purposes;

“mining rights” means the right to minerals on, in or under any land;

“Minister” means the Minister of Natural Resources;

“Ministry” means the Ministry of Natural Resources;

“patent” means a freehold grant from the Crown;

“peat” means vegetable matter decomposed in water and partly carbonized to such an extent that it may be used as fuel;

“permittee” means the holder of a quarry permit;

“placer deposit” means a concentration of heavy minerals or precious stones by natural mechanical concentration of mineral particles from weathered debris;

“prescribed” means prescribed by the regulations;

“prospecting” means the investigating of and searching for minerals;

“quarry” means land from which quarry material, sand and gravel and peat is being or has been removed by surface or underground excavation;

“quarry material” includes rock, shale, dolostone, limestone, marble, sandstone, granite, quartz, feldspar, overburden, fluorspar, gypsum, clay, marl and any other material prescribed that is the property of the Crown;

“regulations” means the regulations made under this Act;

“Supervisor” means the Supervisor of the Mining Lands Section of the Land Management Branch of the Ministry;

“surface rights” means every right in land other than mining rights;

“transfer”, when referring to land, does not include surrender or forfeit;

“Treasurer” means the Treasurer of Ontario and Minister of Economics;

“unpatented”, when referring to land, means land in respect of which no patent or lease has been issued or in respect of which, the interest given by patent or lease has reverted, other than by transfer, to the Crown;

“valuable mineral” means a deposit of mineral evaluated at the time of discovery to be of such a nature and containing such kind and quantity of mineral in place, other than limestone, marl, clay, sand and gravel, marble, peat or building stone, that the vein, lode or deposit has the potential of being or becoming a profitable producing mine. R.S.O. 1980, c. 268, s. 1, *amended*.

2.—(1) The purpose of this Act is to encourage prospecting, staking and exploration for the development of mineral resources of Ontario. Purpose of Act

(2) Clause 2 (a) of the *Planning Act, 1983* does not apply where prospecting, staking and exploring for, and development of, mineral resources are carried out in accordance with this Act and the regulations. *New.* Where 1983, c. 2 (a) does not apply

PART I

ADMINISTRATION AND RECORDS

3. The Minister is responsible for the administration of this Act and the management and disposition of mineral resources for the benefit of the people of Ontario. R.S.O. 1980, c. 268, s. 4, *amended*. Administration by Minister

4. The Minister may divide the Province of Ontario into mining divisions and may alter the number, limits or extent thereof. R.S.O. 1980, c. 268, s. 14, *amended*. Mining divisions

5.—(1) The Lieutenant Governor in Council may appoint an employee of the Ministry as a recorder for each mining division. Appointment of recorder

(2) The Minister may appoint an employee of the Ministry as a deputy recorder for each mining division who shall, under the supervision and direction of the recorder, exercise, on behalf of the recorder, all the duties and powers of the recorder except those specifically restricted in the appointment. Deputy recorder

(3) Where a recorder is absent because of illness or for any other reason, the deputy recorder shall act as recorder on a temporary basis. R.S.O. 1980, c. 268, s. 6 (1, 2), *amended*. Deputy as acting recorders

Recording
office

6.—(1) Each mining division shall have a recording office and the recording office is the proper office for filing and recording all documents required or permitted to be filed under this Act.

Documents
filed in
Minister's
office

(2) The office of the Minister is the proper office for depositing all documents required or permitted to be deposited under this Act affecting,

- (a) a licence of occupation or exploratory licence of occupation;
- (b) a right, privilege or interest that may be acquired under this Act arising from a licence of occupation or exploratory licence of occupation; or
- (c) a grant under this Act that is not a grant registrable under the *Land Titles Act* or the *Registry Act* or a right, privilege or interest that may be acquired under this Act in respect of such grant.

R.S.O. 1980,
cc. 230, 445

Provision
of records,
etc.

(3) Every recorder shall provide for inspection any record of a mining claim kept in his recording office and any filed document relating thereto and,

- (a) shall supply a copy of any record of a mining claim and a copy of the whole or part of any document kept in the recording office; and
- (b) shall certify, on request, any copy provided under clause (a).

Maps to
be kept

(4) Every recorder shall keep in his recording office,

- (a) a map showing the territory included in the mining division; and
- (b) township or area maps.

Idem

(5) Every recorder shall indicate on the maps referred to in clause (4) (b) all mining claims as they are recorded.

Provision
of maps

(6) On request, the recorder shall provide for inspection any map mentioned in subsection (4). R.S.O. 1980, c. 268, s. 15, *amended*.

Inspector

7.—(1) The Minister may designate, in writing, any employee of the Crown as an inspector for the purpose of this Act.

(2) Every employee of the Ministry who is a recorder, mining claim inspector, mineral resources co-ordinator or a geologist is an inspector for the purpose of this Act. Idem

(3) Subject to subsection (4), for the purpose of this Act and the regulations, Powers of inspector

(a) an inspector who is a recorder, mining claim inspector or has been designated under subsection (1),

(i) may enter in or on any land or buildings during normal business hours without warrant,

(ii) may require the production of any licence, permit, record, report or land survey and may inspect and make copies of anything produced, and

(iii) alone or in conjunction with other persons possessing special or expert knowledge, may make such examinations or tests as he considers necessary to ascertain whether this Act and the regulations are being complied with and, for such purpose, may take or remove any material or substance; and

(b) an inspector who is a geologist or a mineral resources co-ordinator may examine any land for geological purposes and remove representative surface samples of rock or mineral sufficient for the purpose of testing or analysis.

(4) No inspector shall enter,

(a) a locked building; or

(b) a room or place being used as a dwelling,

Restricted entry into core storage areas and dwelling

except with the consent of the mining claim holder, lessee, owner or occupier, as is appropriate in the circumstances. *New.*

8. Every recorder, deputy recorder, Director and Supervisor is *ex officio* a commissioner for taking affidavits in Ontario. R.S.O. 1980, c. 268, s. 13, *amended*. Commissioners for affidavits

9.—(1) No employee of the Ministry who is a recorder, deputy recorder, mining claim inspector, geologist or mineral resources co-ordinator or has access greater than that of the public to information provided under this Act may directly or Employees of Ministry prohibited from staking, etc.

indirectly, by himself or by any other person, stake a mining claim or acquire any right or interest in an unpatented mining claim.

Staking, etc.,
void (2) Every staking or right or interest acquired by a person in contravention of subsection (1) is void. R.S.O. 1980, c. 268, s. 12, *amended*.

Evidence of
records or
documents

10. A copy of a record mentioned in subsection 6 (3), every document filed in a recording office and every document deposited under subsection 6 (2) (in the Minister's office), certified to be a true copy by the person who has custody of the record or document, may be received in any court as *prima facie* proof of the record or document and its contents without proof of the signature or official position of the person making the certification. R.S.O. 1980, c. 268, s. 9, *amended*.

Filing
constitutes
notice

11. The filing of a document under this Act constitutes notice of the document notwithstanding any defect in the requirements for recording but it is the duty of the recorder not to record except upon determining that the requirements of this Act and the regulations have been met. R.S.O. 1980, c. 268, s. 73, *amended*.

Instrument
deemed to
be
recorded
when filed

12.—(1) Except as provided in section 41 (recording a mining claim), if all requirements for recording have been met, every recordable document shall be deemed to have been recorded at the time that it was filed.

Idem

(2) Where a document is not recordable because of a deficiency in the document or any supporting evidence or the proper fee has not been submitted, and the person filing the document remedies the problem within the time specified by the recorder, subsection (1) applies as if the document was recordable when it was filed. *New*.

Priority of
interest

13. Priority of recording prevails unless before the prior recording there has been actual notice of the prior document by the person claiming under the prior recording. *New*.

Recording
documents

14.—(1) Except as otherwise provided in this Act or the regulations, no document affecting a recorded right or interest acquired under this Act shall be recorded unless it is signed and attested to by affidavit.

Where
corporate
seal

(2) Where an instrument executed by a corporation has the corporate seal stamped thereon, the affidavit referred to in subsection (1) is not required. R.S.O. 1980, c. 268, s. 71, *amended*.

(3) A notice of a document giving rise to an express, Trusts implied or constructive trust, relating to an unpatented mining claim, shall not be recorded.

(4) Describing a mining claim holder as a trustee, whether the beneficiary or object of the trust is or is not mentioned, does not constitute notice of a trust and does not impose on any person dealing with the holder the duty to enquire as to the power of the holder in respect of the mining claim and the holder may deal with the mining claim as if the description had not been inserted. Describing holder as trustee, etc., effect of R.S.O. 1980, c. 268, s. 68, *amended*.

15.—(1) Where, during any twelve-month period, the time for doing something under this Act is extended, the extension does not affect any requirement under this Act to do anything required to be done, during the twelve-month period next following, by the anniversary date ending that next twelve-month period. Anniversary day remains unchanged

(2) Where the time for doing something under this Act is suspended, the next anniversary date after the suspension in respect of the mining claim involved shall be deemed to be the date that falls after the anniversary date that would have occurred, except for this provision, by the number of days that equals the number of days of the suspension and all subsequent anniversary dates shall be adjusted accordingly. Anniversary changed
New.

16.—(1) A copy of a writ of execution certified by the sheriff of a county or district or a bailiff of a small claims court to be a true copy of a writ in his hands may be filed and the recorder, upon being given the number or description of a mining claim of which the execution debtor is the recorded holder or in which he has a recorded interest, shall record the writ on the record of the claim. Writs of execution

(2) A writ of execution, upon being recorded, binds all rights or interests of the execution debtor in the appropriate mining claim and authorizes the sheriff or bailiff to sell and realize upon the rights or interests affected. Effect of recording

(3) A transfer under subsection (2) from a sheriff or bailiff to a purchaser may be recorded in the same manner and with the same effect as a transfer from the execution debtor. Transfer

(4) After the recording of a writ of execution, the sheriff, bailiff or the execution creditor may do anything that the execution debtor could do to keep the mining claim, right or interest in, or restore it to, good standing and is entitled to add the necessary expense thereof to the execution debt. Keeping mining claim in good standing after recording of execution

Discharge of
execution

(5) A writ of execution may be discharged by recording a certificate from the sheriff or bailiff that the mining claim is no longer bound by the writ, by recording a release from the execution creditor or by filing an order of the Commissioner directing its removal. R.S.O. 1980, c. 268, s. 75, *amended*.

Address
for service

17.—(1) Every application for a prospector's licence shall have endorsed thereon the residence and post office address of the person making it, at which address service may be made.

Substitution

(2) An address provided under subsection (1) may be substituted with another address by the licence holder notifying the recorder, in writing, of the substitution.

Service

(3) Where a person is required or entitled under this Act or the regulations to be served, service is sufficiently made if delivered or sent by prepaid first class mail to the person at the address given under subsection (1) or (2).

Idem

(4) Where service is made by prepaid first class mail under subsection (3), it shall be deemed to have been made on the fifth day after the day of mailing. R.S.O. 1980, c. 268, s. 67, *amended*.

Correction of
instrument

18.—(1) Where a document conveying an interest has been issued,

(a) to or in the name of the wrong person through mistake or contains a clerical error, misnomer or a wrong description of the land intended to be granted; or

(b) for any land or mining rights affected by an annulment under subsection 7 (1) of the *Public Lands Act*,

R.S.O. 1980,
c. 413

R.S.O. 1980,
cc. 230, 445

the Minister, if no indication of an adverse interest is filed or registered in respect of the land and whether or not the land has been registered under the *Land Titles Act* or the *Registry Act*, may cancel the document by issuing a correct one or one with a revised description, as the case may be, in its stead.

Effective
date

(2) A corrected document issued under this section shall relate back to the date of the cancelled one and has the same effect as if issued on the day of the cancelled document. R.S.O. 1980, c. 268, ss. 106, *part*, 107, *part*.

Time
expiring
on a
Saturday

19. Where time limited for doing anything in a recording office or the office of the Commissioner or the Minister

expires on a Saturday, the time so limited extends to and the thing may be done on the day next following that is not a holiday. R.S.O. 1980, c. 268, s. 159, *amended*.

20. Where power is conferred by this Act on the Commissioner to extend the time for doing an act, the power may be exercised as well after as before the expiration of the time allowed for doing the act. R.S.O. 1980, c. 268, s. 158, *amended*. Power to extend time

PART II

PROSPECTING, STAKING AND RECORDING MINING CLAIMS

21.—(1) No person may prospect on Crown land, stake or record a mining claim or acquire any right or interest therein unless he is the holder of a prospector's licence issued under this Act. R.S.O. 1980, c. 268, s. 18 (1), *amended*. Prospector's licence required

(2) Subsection (1) does not apply to a sheriff, bailiff or execution creditor exercising his rights under section 16. Exception for creditor

(3) Any individual may, on behalf of a holder of a prospector's licence, erect posts or blaze lines or affix duplicate tags or new tags in accordance with subsection 34 (5) and that individual need not hold a prospector's licence. No licence required to assist in staking, etc.

(4) No person may hold more than one prospector's licence. One licence only

(5) A prospector's licence is not transferable. Licence not transferable

(6) No individual under the age of sixteen years may hold a prospector's licence. Age restriction

(7) No individual under the age of eighteen years may stake a mining claim or acquire a right or interest therein. Idem

(8) A prospector's licence is valid for the life of the person to whom it is issued. Lifetime licence

(9) A recorder may issue a prospector's licence or replacement thereof to any applicant who applies therefor. R.S.O. 1980, c. 268, s. 19, *amended*. Application for licence

22.—(1) Where the recorder finds, after a hearing, that the holder of a prospector's licence has contravened any of the provisions of this Act or the regulations, he may, by order and upon notifying the licensee, suspend the licence for a period not exceeding five years. Suspension of licence

Limited
effect

(2) Notwithstanding the suspension of a licence, the licensee may continue to maintain his mining claims by performing assessment work and may hold or otherwise deal with his mining claims. *New.*

Entering
on land

23. Except as otherwise provided in this Act, any recorded mining claim holder or an agent on his behalf may enter on the claim and explore for minerals and perform the work required by this Act to maintain it. R.S.O. 1980, c. 268, s. 28, *amended.*

Crown land
eligible for
prospecting

24.—(1) Any Crown land may be prospected except where,

- (a) the land has been withdrawn from prospecting;
- (b) there is a mining claim in good standing;
- (c) the land has been set apart as Indian reserve land;
- (d) the land has been set apart under the *Provincial Parks Act*; or
- (e) the mining rights are held by the Crown under *The Canada Company's Lands Act, 1922.*

R.S.O. 1980,
c. 401

1922, c. 24

Exception

- (2) Clause (1) (b) does not apply to prevent,
- (a) the person who staked the mining claim from prospecting the claim before it is recorded; or
 - (b) the mining claim holder from prospecting it.

Idem

(3) Clause (1) (d) does not apply to prevent prospecting in accordance with regulations made under the *Provincial Parks Act.* *New.*

Crown land
eligible for
staking

25. Any Crown land may be staked as a mining claim except where,

- (a) the land has been withdrawn from staking;
- (b) a *bona fide* application under the *Public Lands Act* in respect of the land is pending in the Ministry and the pending disposition may include the mining rights;
- (c) the surface rights have been subdivided, surveyed, sold or otherwise disposed of for summer resort purposes;

R.S.O. 1980,
c. 413

- (d) the land has been set apart under the *Provincial Parks Act*; R.S.O. 1980,
c. 401
- (e) the mining rights are held by the Crown under *The Canada Company's Lands Act, 1922*; 1922, c. 24
- (f) the Minister, the Minister of Energy or the Minister of Transportation and Communications certifies that the land is required for the development of water power or for a highway or some other purpose in the public interest and the Minister is satisfied that the mining rights do not constitute valuable mineral;
- (g) the land has been set apart as Indian reserve land; or
- (h) a proceeding under this Act in respect thereof is pending before a court, the Commissioner or a recorder.

26.—(1) No person may prospect or stake a mining claim on that part of land that, Crop bearing
land

- (a) is used as a garden, orchard, vineyard or nursery;
- (b) bears crops that may be damaged by prospecting; or
- (c) has situated thereon a spring, artificial reservoir, dam, waterworks, dwelling house, outhouse, manufactory, public building, church or cemetery,

except with the consent of the person entitled to the surface rights or under an order of the recorder.

(2) An order referred to in subsection (1) may be subject to such terms as the recorder considers proper. Order

(3) Where land is prospected or staked under an order made under this section, section 106 (compensation) applies. Compensation

(4) In subsection (1), "person" includes the Crown. Interpretation
R.S.O. 1980, c. 268, s. 33, amended.

27.—(1) A mining claim that encompasses, Exception

- (a) land, the surface rights of which have been subdivided, surveyed, sold or otherwise disposed of by the Minister for summer resort purposes; or

- (b) land referred to in subsection 26 (1) in respect of which the consent referred to in the said subsection is not received,

may be staked and recorded subject to a reservation of the surface and mining rights in the encompassed land.

Idem
R.S.O. 1980,
c. 401

(2) Clause 25 (d) does not apply to prevent staking in accordance with regulations made under the *Provincial Parks Act*.

Idem
1924, c. 15

(3) Clauses 24 (1) (c) and 25 (g) do not apply to prevent prospecting or staking in accordance with *The Indian Lands Act, 1924*. R.S.O. 1980, c. 268, s. 30, *amended*.

Where
forfeiture
termination
or surrender

28. Where a licence of occupation in respect of, or a leasehold or freehold interest in, mining land has been surrendered to the Crown, expires or is terminated or forfeited, the land involved is not open for prospecting or staking until a time fixed by the Minister is published in *The Ontario Gazette*. *New*.

Agricultural
designation

29.—(1) The Minister may designate any Crown land that is open for prospecting or staking as suitable for disposition for agricultural purposes.

Mining
claims on
agricultural
lands

(2) A person who stakes or records a mining claim on land designated under subsection (1) does not obtain thereby surface rights or the right to obtain surface rights to any part thereof for any purpose.

Where
surface
rights
necessary
for mining
operations

(3) Where surface rights on any land designated under subsection (1) are required to carry on mining operations, the Minister may determine the part of the surface rights so required and may sell or lease to the mining claim holder the surface rights or such part thereof as he considers essential to the efficient carrying on of mining operations.

Conditions
for sale
or lease

(4) A sale or lease under subsection (3) may be subject to such conditions precedent or subsequent as the Minister considers proper. R.S.O. 1980, c. 268, s. 41, *amended*.

Areas
requiring
protection

30.—(1) The Minister may designate any Crown land that is open for prospecting and staking as being areas requiring protection.

Idem

(2) All Crown land that is within ninety-five metres of a lake, river or stream is designated as being an area requiring protection.

(3) No person shall strip, trench or excavate any land designated under subsection (1) or (2) except in accordance with the prior consent of the Minister.

Stripping,
etc.,
prohibited

(4) The Minister may reduce or eliminate the distance referred to in subsection (2) within any designated area.

New.

Alterations
by Minister

31.—(1) Where the Minister recommends the establishment or extension of a townsite on any part of an unpatented mining claim, the Lieutenant Governor in Council may reserve the surface rights on the claim or such parts of it as may be necessary for townsite purposes.

Townsites on
unpatented
claims

(2) The Lieutenant Governor in Council may make such regulations as the Lieutenant Governor in Council considers necessary for the better carrying out of this section. R.S.O. 1980, c. 268, s. 66.

Regulations

32.—(1) The Minister may by order,

Withdrawing
or reopening
land

(a) withdraw from prospecting or staking any land, the mining rights or surface rights of which are in the Crown; and

(b) reopen for prospecting or staking any land, mining rights or surface rights that have been withdrawn under this Act or a predecessor thereof.

(2) An order under subsection (1) is not a regulation within the meaning of the *Regulations Act*. R.S.O. 1980, c. 268, s. 36, *amended*.

Order not a
regulation
R.S.O. 1980,
c. 446

33. A mining claim may be staked in a prescribed size, form and manner on any day. *New.*

Size of
mining claim

34.—(1) Tags and duplicate tags shall be provided by the Ministry.

Tags

(2) A tag may be used once only.

Idem

(3) An unused set of tags may be transferred.

Idem

(4) The licensee, at the time of staking, shall personally affix the respective tag of a set of tags at each corner of a mining claim and affix tags on the line posts.

Tagging at
the time of
staking

(5) If tags are not available at the time of staking, the licensee shall personally mark on each corner post and line post

Where tags
not
available

the prescribed information and within six months after the date of recording affix the tags assigned by the recorder.

For affixing tags

(6) The recorder may by order extend the time for affixing tags on application made during the thirty days before the expiration of the six months. *New.*

Application to record staking

35.—(1) An application to record the staking of a mining claim shall not be accepted unless it is filed in the recording office within forty-one days after the day on which staking was completed.

Priority of completion

(2) Priority of completion of staking a mining claim shall prevail notwithstanding that a prior application to record all or part of the same lands has been filed or recorded. *New.*

Substantial compliance

36. Substantial compliance, as nearly as circumstances will reasonably permit, with the requirements of this Act and the regulations as to the staking of a mining claim is sufficient. R.S.O. 1980, c. 268, s. 50.

Recorder may order alterations

37.—(1) Where there is a question whether a mining claim has been staked in accordance with the Act and the regulations and the recorder is satisfied that there is substantial compliance with the provisions of this Act and the regulations, he may make an order directing or permitting a holder,

- (a) to move, remove, alter or replace posts and tags;
- (b) to move or alter claim lines;
- (c) to affix tags that have not been affixed at the time of staking; and
- (d) to replace tags, affixed at the time of staking, that have since been removed or destroyed.

Time for work to be completed

(2) Every recorder who makes an order under subsection (1) shall set out in the order the time within which the work must be completed and reported to him. R.S.O. 1980, c. 268, s. 131 (6), *amended.*

Improper description of area

38.—(1) Where, in the opinion of the recorder, there has been an attempt made, in good faith, to comply with this Act and the regulations, the inclusion of more or less than the prescribed area in a mining claim or the failure to describe or set out in a filed application, sketch or plan the actual area or parcel of land, the mining rights of which were staked, does not invalidate the claim.

(2) Where a mining claim exceeds the area prescribed, the area of the claim may be reduced by the recorder. R.S.O. 1980, c. 268, s. 51 (5), *amended*. Claim may be reduced

39. A mining claim staked in a restricted travel zone under the *Forest Fires Prevention Act* shall not be recorded unless the applicant satisfies the recorder that he entered the fire district before it was declared to be a restricted travel zone or did so under the authority of a travel permit. R.S.O. 1980, c. 268, s. 49, *amended*. Restricted travel zone
R.S.O. 1980, c. 173

40.—(1) No mining claim shall be recorded in respect of land owned by the Ontario Northland Transportation Commission, except with the consent of the Commission or the Minister. Where consent required to record

(2) No mining claim shall be recorded, except with the consent of the Minister, in respect of, Idem

(a) land reserved or set apart as a townsite by the Crown; or

(b) land laid out into town or village lots on a registered plan by the owner thereof.

(3) An application to record the staking of a mining claim on land mentioned in subsection (1) or (2) may be filed with the recorder pending the consent of the Commission or the Minister. *New*. Idem

41. The time of recording a mining claim that has been filed is the time that the application to record is stamped as approved. R.S.O. 1980, c. 268, s. 54, *part, amended*. Time of recording claim

42. An individual who has staked a claim may apply to have the staking recorded in the name of another person. *New*. Recording in another name

43.—(1) Except as authorized by this Act, any person who stakes a mining claim and fails to file an application to record the staking within the allowed time is not entitled to again stake the land or any part thereof or to record a mining claim thereon unless he satisfies the recorder, by affidavit, that he acted in good faith and not for an improper purpose. Failure to file staking

(2) Failure to file a staked mining claim is not an abandonment. R.S.O. 1980, c. 268, s. 48, *amended*. Failure not an abandonment

44. The letters designating the mining division in which the mining claim is situate assigned by the recorder at the time Mining claim number

of recording and the number of the set of tags affixed at each corner post of the claim constitute the number of the mining claim. *New.*

Death of
staker or
holder

45.—(1) Where a person in whose name a mining claim has been staked dies before the claim is recorded or where a holder dies before the issue of a lease for his mining claim, notice of the death, in the form of an affidavit or death certificate, may be filed.

Time
suspension

(2) Where the notice referred to in subsection (1) is filed, no person shall stake a mining claim comprising any part of the claim without the consent of the Commissioner and all time requirements in respect of the claim are suspended for one year from the time the notice is filed or until a vesting order is made under subsection (3), whichever is sooner.

Application
for vesting
order by
Commis-
sioner

(3) Where a notice of death has been filed, the personal representative, devisee or next of kin of the deceased may apply to the Commissioner within one year after the notice is filed for an order vesting in the applicant the interest of the deceased in the mining claim. R.S.O. 1980, c. 268, s. 88, *amended.*

Conflicting
interests

(4) Where an application is made under subsection (3) and there is something filed that indicates that a person other than the applicant may have an interest in the mining claim or any part thereof, the Commissioner may make such order settling the interests of the persons involved as he considers equitable in the circumstances. *New.*

Re-identi-
fication of
boundary
lines

46.—(1) Every holder of a mining claim recorded under this Act shall re-identify the boundary lines of the claim, in the same manner as is required to identify lines for original stakings, at ten-year intervals following the recording of the claim and must give the recorder an affidavit to that effect on or before the end of each ten-year interval.

Exception

(2) This section does not apply to a mining claim in respect of which a lease or patent has been issued. *New.*

Mining claim
recorded
in wrong
division

47. If by error a mining claim is recorded in the recording office for a mining division other than that in which the land is situate, the error does not affect the holder's interest in the land and the recorder in the appropriate division shall record the mining claim, assign the appropriate letters designating the correct mining division and indicate on the new record the date of the former record and date of rectification. R.S.O. 1980, c. 268, s. 53, *amended.*

48. Where a mining claim is situated in more than one mining division, the claim may be recorded in the recording office of either division and all subsequent documents relating to the claim shall be filed and recorded in that recording office. *New.*

Claim in
more than
one
division

49. Any person who has staked any part of a recorded mining claim and has filed an application to record the staking may, only at the time of filing the application, by way of a dispute, raise the issue that a recorded mining claim or group of claims is invalid in whole or in part. *New.*

Invalid
claims

50.—(1) Where a dispute is filed, the recorder shall record it on the record of the disputed mining claim or group of claims.

Recording of
disputes

(2) Where a dispute is filed in respect of a mining claim for which a certificate of record is pending, the recorder shall transfer the dispute to the Commissioner.

Dispute to
Commis-
sioner

(3) A dispute shall not be recorded against a mining claim in respect of which a certificate of record has been granted or where the validity of the manner and method of staking the claim has been adjudicated by the recorder or the Commissioner.

Idem

(4) Upon a dispute being recorded, all time requirements under the Act or regulations as to performing and recording work in respect of the mining claim involved are suspended and do not begin to run until the dispute is finally adjudicated and the decision is entered on the record of the claim. R.S.O. 1980, c. 268, s. 56, *amended.*

Time
suspended

51.—(1) Where a mining claim has been recorded, the claim holder may, at any time after the expiration of forty-one days after the recording, apply for a certificate of record.

Certificate
of record

(2) Subject to subsection (3), a recorder, upon an application being made therefor, shall issue a certificate of record in respect of the mining claim if it is not subject to an unresolved dispute and the recorder is satisfied that the requirements of this Act and the regulations with respect to the staking of the claim have been met.

Idem

(3) Where a dispute is transferred to the Commissioner under subsection 50 (2), the Commissioner may, where he considers it to be appropriate, direct the recorder to issue the certificate of record. R.S.O. 1980, c. 268, s. 57 (1), *amended.*

Idem

Certificate
conclusive
evidence

52.—(1) A certificate of record is final and conclusive evidence of the proper staking of a mining claim.

Cancelling
certificate
of record

(2) Notwithstanding subsection (1), where a certificate of record has been issued by administrative error, the Commissioner may cancel it on the application of the Director. R.S.O. 1980, c. 268, s. 58, *amended*.

Free assays

53. Every person who records a mining claim may obtain from the recorder free assay coupons in accordance with the regulations. R.S.O. 1980, c. 268, s. 63 (1), *amended*.

Limited
rights of
claim holders

54.—(1) The act of,

- (a) staking;
- (b) filing of an application for; or
- (c) recording of,

a mining claim does not confer upon the staker or holder the right to take, remove or otherwise dispose of any minerals, quarry material or other material, including buildings, machinery or chattels, found in, on or under the mining claim or any other right to or in respect of the mining claim other than such rights as are specified in this Act.

Licensee

(2) A holder who does not have a certificate of record in respect of the mining claim is a mere licensee of the Crown.

Tenant
at will

(3) A holder who has a certificate of record but does not have a patent or lease in respect of the mining claim is a tenant at will of the Crown. *New.*

Right of
access

55.—(1) A mining claim holder has the right prior to any subsequent right to use surface rights in respect of the claim to enter on, use and occupy such parts thereof as are necessary for the purpose of prospecting and exploration for minerals leading to the development and operation of a mine.

Release
of surface
rights

(2) Where a mining claim holder releases his right to use the surface rights or any part thereof, the recorder shall record the release on the record of the claim.

Where holder
does not
consent to
release
of surface
rights

(3) Where an application is made under any Act for the use of surface rights in respect of a mining claim that have not been reserved or excluded and the claim holder does not consent to the proposed use, the Minister may refer the application to the Commissioner to determine the disposition of the surface rights.

(4) Where an application under subsection (3) is referred to the Commissioner, he shall give all interested persons at least ninety days notice of the hearing. Notice

(5) Where an application referred to in subsection (3) is made, the Minister may require the applicant to provide a survey of the land involved. R.S.O. 1980, c. 268, s. 61, amended. Survey

56. An unpatented mining claim is not liable to assessment or taxation for municipal or school purposes. R.S.O. 1980, c. 268, s. 60, *part*, amended. Municipal tax exemption

57. Where the Minister is satisfied that the purpose of holding a mining claim is to mine a placer deposit, he shall give written confirmation that when a lease is issued in respect of the claim it shall contain the right to remove sand and gravel therefrom. *New.* Placer deposit

58.—(1) The Minister may give written permission, subject to such conditions as are considered appropriate, to mine, mill and refine minerals from an unpatented mining claim for the purpose of testing mineral content. Permission to test minerals

(2) Permission granted under subsection (1) shall be for a specified time and shall cover a specified quantity of minerals. Conditions

(3) The end product of mining, milling and refining permitted under subsection (1), except as provided in subsection (4), shall not be sold or otherwise disposed of until the mining claim from which the minerals were taken is leased or patented under this Act. Sale of minerals

(4) Subsection (3) does not apply where the Minister gives written permission for the sale or disposition and where the Minister does so the sale or disposition shall be in accordance with such terms as the Minister may impose. Permission to sell

(5) Hand samples for the purposes of analysis may be removed without permission under subsection (1). R.S.O. 1980, c. 268, s. 62, *amended.* Hand samples

59.—(1) No person is entitled to enforce a right or interest in a mining claim contracted for or acquired before the staking of the claim where the staking is done by another person unless the right or interest is evidenced by writing, signed by the person doing the staking or the mining claim holder, or is corroborated by the evidence of a second person or by physical evidence that tends to support the claim to the right or interest. Enforcing interest acquired prior to staking

- Where
R.S.O. 1980,
c. 481 does
not apply (2) Where a right or interest is evidenced as required by subsection (1), the *Statute of Frauds* does not apply. R.S.O. 1980, c. 268, s. 69 (1), *amended*.
- Inspection
by recorder **60.**—(1) The recorder may order an inspection of a mining claim at any time without notice for the purpose of ascertaining whether there is compliance with this Act and the regulations. R.S.O. 1980, c. 268, s. 89, *part, amended*.
- Report (2) Where an inspection is ordered under subsection (1), the inspector shall file a report of the inspection with the recorder who shall enter a record of the report on the record of the mining claim involved.
- Hearing by
recorder (3) If the recorder is of the opinion that, based on the report filed, there is a question as to compliance with the provisions of this Act or the regulations, he shall hold a hearing to determine the question. *New*.
- Improper
use of land **61.**—(1) Where the Minister believes that a mining claim is being used for a purpose other than that of the mining industry, the Minister may direct the Commissioner to hold a hearing.
- Cancellation
of claim (2) Where, after holding a hearing, the Commissioner is satisfied that the mining claim is being used for a purpose other than that of the mining industry, he may make an order cancelling the claim.
- Idem (3) Where an order is made under subsection (2), the Commissioner shall file the order with the recorder and on the order being filed all interest in the mining claim forfeits to the Crown. R.S.O. 1980, c. 268, s. 65, *amended*.
- Ministry
error **62.**—(1) Where an unpatented mining claim is subject to forfeiture as a result of an administrative error, the claim holder may apply to the recorder for an order confirming the claim.
- Idem (2) Where an application is made under subsection (1) and there is nothing filed to indicate that any part of the mining claim has been staked by another staker and there is no other reason why the order should not issue, the recorder may make an order confirming the claim.
- Idem (3) Where an application is filed under subsection (1) and something is filed indicating that a part of the mining claim has been staked by another staker, the recorder shall refer the matter to the Commissioner who may make such order subject to such conditions as he considers proper. *New*.

PART III

ASSESSMENT WORK

- 63.**—(1) Every mining claim holder shall, during the five-year period immediately following the recording of his mining claim, perform annual assessment work as prescribed. Assessment work-time period
- (2) For the purpose of subsection (1), assessment work credits shall be in terms of dollars spent. Idem
- (3) For the purpose of verifying dollars spent, the Minister may require the mining claim holder to provide information additional to that required under the regulations. Additional information
- (4) Where assessment work is done without expenditures, the assessment work credits shall be as prescribed. Idem
- (5) Every mining claim holder shall, not later than the anniversary date, file, in the recording office, a report of the assessment work done for the purpose of complying with subsection (1). *New.* Time for reporting assessment work
- 64.** Prospecting, airborne geophysical work and airborne geochemical work done on Crown land before the staking of the mining claim are eligible for assessment work credit as prescribed. *New.* Prospecting, geophysical and geochemical work
- 65.**—(1) No person shall start ground assessment work, other than prospecting, on Crown land for the purpose of assessment work credits before that land is staked as a mining claim or consent to record, where required by section 40, is given. No assessment work prior to staking
- (2) No person shall strip, trench or excavate within fifty metres from the edge of the road bed of a highway or road funded or maintained by the Ministry of Transportation and Communications except with the consent of the Minister. No assessment work without consent
- (3) No person shall perform ground assessment work in respect of a mining claim that was staked pursuant to consent of the Crown under section 26 or on land, the surface rights of which were withdrawn under section 32, except in accordance with the directions of the Minister. *New.* Idem
- 66.**—(1) Where there is no occupant of the surface rights, a mining claim holder may enter on the land comprising his mining claim to perform ground assessment work. Right to do ground assessment work

Surface
rights holder
to be notified

(2) Where there is an occupant of the surface rights of the land comprising a mining claim, a mining claim holder who proposes to do ground assessment work shall give fifteen days notice, in writing, to the occupant of his intention to perform the work.

One-year
work period

(3) A person who has given notice under this section may enter on the land and perform the work at any time during the twelve-month period immediately following the day the notice takes effect.

Further
periods

(4) A person who has given notice under this section and has not completed the work in the twelve-month period but intends to complete the work shall give a further notice, in which event subsection (3) applies again.

Evidence
of notice

(5) A recorder shall not record ground assessment work unless the occupant has waived, in writing, the requirement for a notice or the mining claim holder certifies that,

- (a) he has given the required notice;
- (b) there is no occupant; or
- (c) the surface rights are held by the Crown. *New.*

Excess work

67. Where during any year a mining claim holder performs assessment work in excess of the prescribed requirements, he may include the excess assessment work in the report and the recorder shall credit the excess work against the requirements of subsequent years. *New.*

Work on
adjoining
claims

68. Credit for assessment work performed on an unpatented mining claim by the holder of the claim or by a person entitled by a recorded agreement to acquire an interest in the claim may be applied as assessment work credits on adjoining mining claims of which he is the holder or in respect of which he is entitled to acquire an interest. *New.*

Work on
leased or
patented
land

69. Credit for assessment work performed on land held under a patent, lease or licence of occupation may be applied, as prescribed, as assessment credits on adjoining unpatented mining claims if,

- (a) the land held under patent, lease or licence of occupation and the adjoining claims are held by the same person; or
- (b) an agreement or notice of agreement in respect of application of credits between the holder of the land

held under patent, lease or licence of occupation and the holder of the adjoining claims is on the record of each of the claims. *New.*

70.—(1) Where two or more persons are the holders of a mining claim, each of them shall contribute proportionately to his interest or as they otherwise agree to the cost of the assessment work required to be done thereon. Proportionate contribution of work by co-holders

(2) Where a person fails to contribute as required under subsection (1), the co-holder may apply to the Commissioner for an order vesting in him the rights of the person who failed to contribute. R.S.O. 1980, c. 268, s. 76, *amended.* Vesting order

71. Where a mining claim holder defaults on a payment for assessment work performed on the claim by a person who does not hold an interest in the mining claim, the Commissioner, on the application of the person who performed the work, may make an order vesting the interest or any part of the interest of the defaulting holder in the mining claim in the person who performed the work. R.S.O. 1980, c. 268, s. 81, *amended.* Default in payment for work

72.—(1) Where a report relating to technical assessment work that is required to be submitted to the recorder, Report of technical assessment work

(a) is not filed with the recorder within sixty days after the recording of the assessment work, the recording shall be deemed to have been cancelled at the end of the sixtieth day and the recorder shall amend the record accordingly; or

(b) does not, in the opinion of the Minister, meet accepted technical standards, the Minister may allow a lesser amount of credit or may instruct the recorder to cancel the assessment work credits and the effective date of the amended credit or cancellation shall be the day the amendment or cancellation is recorded by the recorder.

(2) The reports of all technical assessment work submitted under this section shall be available to the public. *New.* Results public

(3) A decision by the Minister under clause (1) (b) concerning the amount of assessment work credits to be allowed is final. R.S.O. 1980, c. 268, s. 77 (21). Amount of credits

(4) Where a mining claim holder applies, in writing, for an extension before a technical report is due, the recorder may Extension of time—technical report

allow an extension to the sixty days set out in subsection (1) to a maximum of an additional sixty days. *New.*

Work
prohibited by
R.S.O. 1980,
c. 173

73.—(1) Where, in order to begin assessment work under this Act, a work permit that is required under any other Act is refused, the assessment work is prohibited under the *Forest Fires Prevention Act* or the holder defers the start of work at the request of the Crown, the recorder shall, on receiving satisfactory evidence of the refusal or prohibition or request, record the refusal or prohibition or request on the record of the mining claim.

Recording
rescission

(2) The recorder, on being notified that a refusal, prohibition or request to defer is rescinded, shall record the date of the rescission on the record of the mining claim.

Extension
of time

(3) Upon a rescission being recorded, the time for the performance of assessment work is suspended by the number of days between the recordings under subsections (1) and (2). R.S.O. 1980, c. 268, s. 79, *amended.*

Extension of
time—late
filing
assessment
work

74.—(1) On application therefor being made to the recorder within thirty days before the expiration of the time for filing a report of assessment work, the recorder may allow an extension of time, not exceeding one year, for performing and filing the report of the assessment work on such conditions as he considers proper.

Limitation

(2) After the sixth anniversary date, an extension of time may be granted only once except if the extension is required because of illness. *New.*

Extension of
time—illness

75.—(1) Where required assessment work has not been performed because of the illness of the mining claim holder, the recorder may, without fee and on application of the holder supported by proof of illness, allow an extension of time, not exceeding one year, for performing and filing a report of the assessment work.

Proof of
illness

(2) Proof of illness referred to in subsection (1) shall be verified, in writing, by a duly qualified medical practitioner or by such other evidence as is satisfactory to the recorder. *New.*

Certificate
of
performance
of work

76.—(1) The recorder, if satisfied that required assessment work has been performed, shall issue, on request therefor, a certificate to that effect.

(2) Before issuing a certificate under subsection (1), the recorder may inspect or cause the inspection of the assessment work. Inspection

(3) Subject to subsection (4), a certificate issued under subsection (1) is final and conclusive evidence of the due performance of the assessment work therein certified. Certificate
final
evidence of
work
performed

(4) Where a certificate is issued under subsection (3) as a result of a mistake, the Commissioner may cancel it upon the application of the Director and a decision by the Commissioner to cancel a certificate is final. *New.* Cancellation

PART IV

ABANDONMENT, SURRENDER AND FORFEITURE OF MINING CLAIMS

77. The application of this Part is limited to unpatented mining claims. *New.* Application
to
unpatented
claims

78.—(1) A mining claim holder may abandon the claim at any time by filing notice of abandonment with the recorder. Abandonment
of claim

(2) A mining claim holder may abandon any part of the claim by filing notice of abandonment with the recorder during the thirty-day period before an anniversary date if, Abandonment
of a portion
of claim

- (a) all assessment work required to be done by that anniversary date has been completed and recorded for the portion to be retained;
- (b) there is no dispute filed in respect of the claim; and
- (c) the area to be retained is a single square or rectangular parcel,
 - (i) in unsurveyed townships in multiples of sixteen hectare square units, or
 - (ii) in surveyed townships in aliquot parts of lots or sections of not less than fifteen hectares more or less,

and the boundaries of the land retained are parallel to the original mining claim boundaries or the lot and concession lines.

Recording of
abandonment

(3) Where a recorder receives a notice of abandonment under subsection (1) or (2), he shall post the notice in the recording office showing the filing date.

Order by
recorder

(4) Where a notice of abandonment is filed under subsection (2), the recorder shall issue an order directing the moving of posts or tags, the erection of new posts and the identification of new boundary lines and stating the time within which the work is to be completed.

Compliance
with order

(5) Where an order is issued under subsection (4), the mining claim holder affected shall file an affidavit within the time set in the order as to compliance with the order and a copy of the affidavit, marked with the date of posting, shall be posted by the recorder in the recording office.

Abandoned
claim open
for staking

(6) Every mining claim abandoned under subsection (1) is open for staking from 9 o'clock in the forenoon of the sixteenth day after the notice of abandonment is filed.

Idem

(7) Where part of a mining claim is abandoned under subsection (2), that part is open for staking from 9 o'clock in the forenoon of the sixteenth day after the posting of the affidavit required under subsection (5).

Reverting
land

(8) Where a mining claim encompasses land that is not part of the claim and that land is abandoned under this section or otherwise would revert to the Crown, that land shall be deemed to be part of the encompassing mining claim and the mining claim holder shall be liable for the performance of assessment work and the payment of recording fees as if that land was part of the encompassing mining claim when it was recorded.

Order may
be varied

(9) Any order made under this section may be rescinded or varied where the person subject to the order applies therefor before the time set out in the order expires. R.S.O. 1980, c. 268, ss. 83, 84, *amended*.

Forfeiture

79. Where the staker or holder of a mining claim has not, within the allotted time,

- (a) complied with any requirement of this Act or the regulations as to staking or recording of a mining claim;
- (b) complied with an order of the recorder or Commissioner;
- (c) performed assessment work required by this Act;

- (d) filed any report of work required to be filed under this Act;
- (e) after the fifth anniversary date for the claim, filed the required report of work or an application for a lease or applied for an extension of time to perform work;
- (f) re-identified boundary lines as required under this Act; or
- (g) affixed tags as required by this Act,

on the expiration of the allotted time, all rights in respect of the claim are forfeited and, without a declaration, entry or act by the recorder, the mining claim is open for prospecting or staking from 9 o'clock in the forenoon of the day after the forfeiture. R.S.O. 1980, c. 268, s. 86, *part, amended*.

80.—(1) Where, without the written consent of the recorder, a mining claim holder removes a tag, stake or post forming part of the staking of the claim or changes or effaces any writing or marking upon a tag, stake or post, the recorder may, after a hearing, order all rights in respect of the mining claim forfeited, in which event he shall set a time and date when the land is open for prospecting and staking. Forfeiture for fraud, etc.

(2) A person who stakes a mining claim on land in respect of which a mining claim is recorded and who alleges that a false report of work has been filed may apply to record the staking if he files a dispute at the same time. Dispute for fraud

(3) Where an application to record a staking and a dispute are filed under subsection (2), the recorder shall hold a hearing and, if he finds that a false report of work has been filed and that the applicant has staked the new mining claim in accordance with this Act and the regulation, shall order that all rights in the claim in respect of which the false report was filed are forfeited and shall record the new mining claim in the name of the applicant. *New.* Hearing where fraud alleged

81. When rights in respect of a mining claim are abandoned or forfeited, the recorder shall mark the record of the mining claim “cancelled” and shall post in the recording office, in the case of a forfeiture, a notice of the forfeiture. R.S.O. 1980, c. 268, s. 86, *part, amended*. Cancelled claim

82.—(1) Any holder whose rights in a mining claim were forfeited under section 79 may apply, within six months after the forfeiture, to the recorder for relief from the forfeiture. Relief from forfeiture

Idem

(2) Where the forfeiture resulted because boundary lines were not re-identified as required, the time restriction referred to in subsection (1) does not apply.

Idem

(3) Where the forfeiture resulted because tags were not affixed as required, the application under subsection (1) can be made only within sixty days after the forfeiture. *New.*

Order by
recorder—re
forfeiture

83.—(1) Where an application has been made under section 82 and there is nothing filed to indicate that any part of the mining claim has been staked by another staker, the recorder may make an order relieving the claim from the forfeiture and,

- (a) in the case where there was failure to perform assessment work within the required time, allowing an extension for a period of up to one year after the forfeiture, for the purpose of performing the assessment work;
- (b) in the case where there was failure to file a report of assessment work within the time required, authorizing the filing of a report of assessment work;
- (c) in the case where an application for a lease of a mining claim was not made within the time required, allowing the filing of the application;
- (d) in the case where the boundary lines were not re-identified as required, allowing an extension of time to re-identify the boundaries;
- (e) in the case where tags were not affixed as required, authorizing the proper affixing of tags; or
- (f) in the case where there is non-compliance with an order of the recorder, directing a new order to the applicant.

Staking
before
order made

(2) Where any part of a mining claim covered by an order made under subsection (1) is staked after the forfeiture but before the issue of the order, the order does not apply in respect of the claim so staked.

Compliance
with order

(3) Where an order has been made under clauses (1) (d) or (e), the mining claim holder involved shall notify the recorder, by affidavit, of compliance with the order. *New.*

84.—(1) Where an application has been made under section 82 within sixty days after the forfeiture and something is filed indicating that a part of the mining claim has been staked by another staker, the recorder shall refer the matter to the Commissioner who may make any order that the recorder is empowered to make under section 83 and any such order may be subject to such conditions as the Commissioner considers proper.

Order by
Commissioner
—re
forfeiture

(2) Where the recorder has referred a matter to the Commissioner under subsection (1), he shall so note on the record of the relevant mining claim.

Notation
by recorder

(3) Every order made under this section is subject to the rights of any person who, in accordance with this Act and the regulations and without notice of the application for the order, stakes and files a mining claim in respect of any part of the mining claim affected by the order.

Staker
without
notice
protected

(4) No order made by the Commissioner under this section comes into effect until it is filed. R.S.O. 1980, c. 268, s. 86, *amended*.

Filing of
orders

PART V

LEASES, LICENCES OF OCCUPATION AND EXPLORATORY LICENCES OF OCCUPATION

85.—(1) Every mining claim holder who has complied with this Act and the regulations is entitled to a lease of the mining claim in respect of the surface and mining rights or, where the surface rights have been disposed of before the claim was staked, the land has been designated under section 29 (agricultural designation), the surface rights have been withdrawn under section 32 or the claim holder so elects, the mining rights only.

Right to
lease of
claim

(2) A recorded holder who has performed and recorded the required amount of assessment work to qualify for a lease may during the twelve-month period following the fifth anniversary of recording the claim,

Option

- (a) apply and pay for a lease by the end of that period;
or
- (b) continue to perform required assessment work and file a work report by the end of that period or, where an extension has been granted under section 74, by the end of the extended period.

- Idem (3) Any recorded holder who has performed and recorded the required amount of assessment work to qualify for a lease before the fifth anniversary of recording the claim may apply and pay for a lease at any time before the said fifth anniversary.
- No lease where prior interest (4) Notwithstanding subsection (1), a lease shall not be issued for rights that are subject to an encumbrance, lien or other interest having priority to that of the mining claim holder. *New.*
- Rental **86.**—(1) Rental under a lease shall be as prescribed.
- Rental where area of mining claim exceeds prescribed area (2) Where the area of a mining claim exceeds by more than 10 per cent the area prescribed for a mining claim and the claim is not reduced in size, the lease rental, per hectare, of the area in excess of the prescribed area is twice the prescribed rental.
- Exception (3) Subsection (2) does not apply where there is a group of adjoining claims held by the same person and their average area does not exceed by more than 10 per cent the area prescribed for a mining claim. R.S.O. 1980, c. 268, s. 94, *part, amended.*
- Term of lease **87.** Every lease shall be for a term of twenty-one years. *New.*
- Renewals **88.** Every lease issued under this Act may be renewed at the discretion of the Minister and where an application for renewal is made within ninety days after the expiration of the lease, the renewal may be granted retroactive to the date of expiration. *New.*
- Reservations in lease **89.**—(1) Every lease is subject to prescribed reservations, provisions and conditions except where the lease contains a provision that a specified prescribed reservation, provision or condition does not apply to that lease. *New.*
- Idem (2) Every lease is subject to a reservation of salt, peat, sand, gravel, natural gas and petroleum, clay and earth unless the Minister expressly waives any of the reservations. R.S.O. 1980, c. 268, s. 60 (3), *amended.*
- Idem (3) Every lease is subject to such use of surface rights as the Minister may grant where the use is not inconsistent with the interest of the lessee.
- Crown reservation adjacent to water (4) In every lease of a mining claim comprised of land covered with or bordering on water, surface rights in the land, up

to 130 metres from the high water mark, are reserved to the Crown. R.S.O. 1980, c. 268, s. 43 (4), *amended*.

(5) In every lease of a mining claim traversed by a road funded or maintained by the Ministry of Transportation and Communications, the surface rights in the road and the land lying ninety-five metres in width along both sides of the road, measured from the outside limits of the right of way of the road, are reserved to the Crown. R.S.O. 1980, c. 268, s. 43 (5), *amended*. Crown reservation adjacent to roads

(6) The surface rights reserved by subsections (4) and (5) shall be deemed to apply to and to have been reserved in all leases of mining claims unless the reservation is waived by the Minister. R.S.O. 1980, c. 268, s. 43 (6), *amended*. Reservation apply to leased claims

(7) All timber and trees on land subject to a lease remain the property of the Crown and the Crown may enter on the land to carry on forestry, to cut and remove timber or trees and to make necessary roads for those purposes. R.S.O. 1980, c. 268, s. 105 (4), *amended*. Ownership of trees remains in Crown

90.—(1) A survey made for the purposes of this Act must be made by an Ontario land surveyor in accordance with the *Surveys Act* and pursuant to the instructions of the recorder. Survey
R.S.O. 1980,
c. 493

(2) Unless the recorder waives the requirement, a survey of the mining claim involved must be filed before an application for a lease of the claim is made. Idem

(3) Where two or more adjoining mining claims are recorded in the same holder and the required assessment work sufficient for lease appears to have been performed and recorded on each claim, the recorder may, subject to subsection (7), allow a perimeter survey of the mining claims to be made in accordance with the *Surveys Act*. Perimeter survey

(4) Upon a perimeter survey made under subsection (3) being filed and approved, the claims included thereto are merged as one claim and the recorder shall so note on the record. Merging claims

(5) Where claims are merged under subsection (4), all work credits relating to those claims shall be combined and shall apply to the new claim. Work credits

(6) Where a perimeter survey discloses that the requirements referred to in subsection (3) have not been met, the holder of the claim shall make up the deficit before the first Deficit in work

anniversary date of the merged claim in addition to performing and recording any other required work for that period.

Inspection
before
perimeter
survey

(7) A recorder may allow a perimeter survey only if he is satisfied, on the basis of an inspector's report, that the requirements of this Act and regulations concerning the staking of mining claims have been complied with. *New.*

Surveys in
subdivided
townships

(8) Every survey or legal description of a mining claim within a surveyed township shall indicate and describe the parts of the lots or sections, according to the original survey of the township, together with the areas thereof. R.S.O. 1980, c. 268, s. 45 (3).

Where no
survey
permitted

(9) No person shall survey a mining claim while there is a dispute in respect of any part of the claim unless he does so with the consent of the recorder. *New.*

Where area
not as
prescribed

91.—(1) If a survey under this Act establishes that the area of a mining claim exceeds the prescribed permitted area, the recorder, on the request of the holder, may reduce the claim to the prescribed permitted area in any way he sees fit.

Land
accidentally
omitted

(2) Where adjoining mining claims in unsurveyed townships or areas are recorded in the name of the same holder, and the sketches filed with the application to record show a plain intention to include, as part of the claims, all land, including land under water, within the perimeter of the claims, all the land, including land under water, within the perimeter of the claims, shall be included in the claim notwithstanding a survey disclosing that any portion was omitted.

Fractions

92.—(1) Where surveys of adjoining mining claims recorded in the names of different holders in unsurveyed townships or areas disclose a fraction or gore, the recorder may award, in his sole discretion, all or part of the fraction or gore to any or all of the holders of the adjoining mining claims.

Idem

(2) Where a fraction or gore is not awarded under subsection (1), it is not open for staking until such time and date as is set by the recorder. R.S.O. 1980, c. 268, s. 110 (2), *part, amended.*

Where area
exceeds area
prescribed

93.—(1) Where a survey establishes that the area of a mining claim exceeds the prescribed permitted area by more than 10 per cent and assessment work has not been done as required for an area of that size, a lease shall not be issued until the mining claim holder,

- (a) performs such additional assessment work as is prescribed; or
- (b) pays a prescribed amount instead of performing additional work. R.S.O. 1980, c. 268, s. 108, *part, amended*.

(2) Where the holder elects, under clause (1) (a), to perform additional work, the recorder shall by order set the date by which the work is to be performed and the report thereof filed. *New.* Idem

94. Where at the time of applying for a lease, a mining claim holder can establish, to the satisfaction of the Minister, that the mining rights lying under any summer resort parcel situated within the limits of the claim contain valuable mineral, the mining rights may be included in the lease. *New.* Summer resort parcel

95. Except where an order has been made under Part VI suspending work and subject to the payment of compensation, where compensation is payable, to an owner, lessee or occupant of the surface rights, every lessee of mining rights has such right of access to the land described in his lease as is necessary for prospecting and exploration for minerals, development of mines and mining of minerals except minerals expressly excepted in the lease or under this Act. *New.* Access granted by lease

96.—(1) Notwithstanding any provision to the contrary, the rental payable for a lease of surface and mining rights or of mining rights issued under section 47, 52 or 100 of *The Mining Act*, being chapter 241 of the Revised Statutes of Ontario, 1960, or a predecessor thereof, is as prescribed for leases under this Act. Lease under previous Act

(2) Every lease referred to in subsection (1) continues to be renewable in perpetuity for periods of ten years and every renewal shall date from the day following the expiry of the lease if application therefor is made within ninety days after the expiration of the lease or within such further period as the Minister, in the circumstances of the case, considers proper. Renewal of lease

(3) Where payment of the rental under a lease referred to in subsection (1) is in arrears for two years or more, the lease may be terminated by an instrument in writing. Termination of lease for arrears of rent

(4) When a lease is terminated under subsection (3), the land involved is not open for prospecting or staking until a time fixed by the Minister is published in *The Ontario Gazette*. Limitation on prospecting

- Converting lease (5) Any lease referred to in subsection (1) may be converted to a lease issued under this Act upon the application of the lessee.
- Natural gas and petroleum—rent and royalties (6) The rent and royalties payable under a lease to produce natural gas and petroleum from Crown land issued for the first time or renewed on or after the 1st day of January, 1981 but before this Act comes into force shall be the rent and royalties prescribed and not as set out in the lease.
- Regulations (7) The Lieutenant Governor in Council may make regulations prescribing rent and royalties payable under leases referred to in subsection (6) and regulations made under this subsection may have retroactive effect. *New.*
- Lease of surface rights for tailings, etc. **97.**—(1) Where the lessee or owner of mining rights or the holder of a licence of occupation requires the use of surface rights for,
- (a) the disposal of tailings or waste material;
 - (b) the sinking of a shaft or erection of a building for mining purposes; or
 - (c) any other purpose essential to mining or mineral exploration,
- the Minister may lease to him any available surface rights.
- Application (2) Application for a lease under this section must be made, in writing, to the Minister with the applicant furnishing,
- (a) a statement of the particular purposes for which the surface rights are to be used;
 - (b) an adequate description and plan or sketch of the area applied for;
 - (c) the first year's rental;
 - (d) proof of ownership or, in the case of a licence of occupation, proof that the applicant is the holder of the licence of occupation, of the mining rights that are the basis of the application; and
 - (e) such other particulars as the Minister may require.
- Survey (3) The Minister may require an applicant to furnish a survey by an Ontario land surveyor.

(4) A lease issued under this section shall be for a term of twenty-one years except where the mining rights that are the basis of the application are held under a lease, the term of the lease under this section shall be coterminous with that lease.

Term of
lease

(5) Where the mining rights that are the basis for a lease issued under this section revert to the Crown, the lease thereupon terminates.

Termination
of lease

(6) A lease issued under subsection (1) terminates on the lessee of the surface rights ceasing to be the same person as the lessee or owner of the mining rights or holder of the licence of occupation, as the case may be. R.S.O. 1980, c. 268, s. 97, *amended*.

Idem

98. The land, surface rights or mining rights held under a lease shall be used solely for the purpose of the mining industry and, on default thereof and on the recommendation of the Commissioner, the Lieutenant Governor in Council may declare the lease terminated. R.S.O. 1980, c. 268, s. 98.

Lease void
where land
used other
than for
mining
purposes

99.—(1) Where a holder of a lease produces evidence, satisfactory to the Minister, that he is producing mineral in substantial quantities from land subject to the lease and production has been continuous for more than one year, he is entitled, on application therefor and surrender of his lease, to a patent of the mining rights held under the lease.

Right to
convert to
patent

(2) In conjunction with a patent under subsection (1), the Minister may grant a patent of such surface rights as he considers appropriate in the circumstances.

Additional
patent

(3) Unless the requirement is waived by the Minister, every applicant under this section shall provide a survey of the land in respect of which rights are to be patented.

Survey

(4) Subsection (1) does not apply to rights in land under navigable water.

No freehold
of land under
navigable
water

(5) A lessee who, by virtue of subsection (4), is precluded from obtaining a patent under this section in respect of rights in land under navigable water and whose lease is not in default, on written application therefor and surrender of the lease, is entitled to a new lease renewable in perpetuity containing a provision that where application for renewal is made within ninety days after expiration of the lease, the renewal shall be granted retroactive to the date of expiration. R.S.O. 1980, c. 268, s. 96, *amended*.

Lease of
land under
navigable
waters

Exploratory
licence of
occupation

100.—(1) The Minister, with the approval of the Lieutenant Governor in Council, may issue exploratory licences of occupation giving the right to search and explore for specific minerals on a specific parcel of land subject to such conditions and limitations as the Minister considers proper.

Special
leases

(2) Where a licensee holding an exploratory licence of occupation finds deposits of minerals that, in the opinion of the Minister, are of potential economic importance, the Minister may issue a lease of land sufficient to encompass the deposits or 10 per cent of the land held under the licence, whichever is greater.

Idem

(3) A lessee of a lease issued under subsection (2) who satisfies the Minister, prior to the expiration of the lease,

(a) that he is producing minerals in substantial quantities from the leased land; or

(b) that the deposit has further potential economic importance,

is entitled to a renewal of the lease for a term of twenty-one years.

Reservation

(4) Every exploratory licence of occupation is subject to such use of surface rights as the Minister may grant where the use is not inconsistent with the interest of the licensee. *New.*

Licence of
occupation

101.—(1) The Minister may, subject to such conditions as the Minister considers proper, issue a licence of occupation permitting a specific use of surface or mining rights, or both, of Crown land.

Consent to
transfer

(2) A licence issued under this section may be transferred only with the consent of the Minister.

Reservation

(3) Every licence of occupation is subject to such use of surface rights as the Minister may grant where the use is not inconsistent with the interest of the licensee. *New.*

Licences of
occupation
issued under
previous Acts

102.—(1) The application of this section is limited to licences of occupation issued under section 52 of *The Mining Act*, being chapter 241 of the Revised Statutes of Ontario, 1960, or any predecessor thereof, and licences of occupation issued without provision for an annual payment.

Rates for
licence of
occupation

(2) Notwithstanding the provisions in a licence of occupation, the annual rental payable in advance shall be as prescribed.

(3) Where a licence of occupation does not specify a date for the payment of the annual rental, the annual rental shall be paid on the anniversary dates of the effective date of the licence.

When annual rental to be paid

(4) Where payment of the rental under a licence of occupation is in arrears for two years, the licence may be terminated by the Minister.

Termination of licence of occupation

(5) Where, subsequent to a termination under subsection (4), the Minister does not have notice of an interest that may be adversely affected thereby, he may, on such terms as he considers proper, reinstate a terminated licence.

Reinstatement

(6) A licence may be transferred only with the consent of the Minister.

Consent to transfer of licence

(7) The Minister may issue a lease of such surface or mining rights as he considers appropriate to a licensee holding a licence of occupation who applies therefor in writing and surrenders his licence of occupation. R.S.O. 1980, c. 268, s. 44, *amended*.

Conversion to lease

103.—(1) Where a lease or a licence of occupation is held by co-lessees or co-licensees and one has not paid his proportionate share of the rent for the four years immediately preceding the application, the Commissioner, on the application of a co-lessee or co-licensee who has paid the rent during that period, may make an order requiring the delinquent co-lessee or co-licensee to pay, within three months after the date of the order or such longer time as the Commissioner may fix, his proportion of the rent to the person who has paid the rent together with interest at the prescribed rate compounded yearly or, in default of payment, vesting the interest of the delinquent co-lessee or co-licensee in the applicant.

Claim for rent payment by co-lessee or co-licensee

(2) For the purpose of this section, a corporation with share capital and shareholders thereof are considered to be co-lessees or co-licensees, as the case may be. R.S.O. 1980, c. 268, s. 196, *part, amended*.

Interpretation

104. The Minister, in special circumstances and with the approval of the Lieutenant Governor in Council, may issue leases or patents relating to mining purposes, subject to such conditions as the Minister considers proper, to applicants who do not otherwise qualify for a lease or patent under this Act.

Special leases and patents

105. Where a lease is terminated before its term expires, the lessee may apply to the Minister to have the lease reinstated and, if there is nothing registered in the office of the

Reinstatement of lease

land registrar indicating an interest that would be adversely affected thereby, the Lieutenant Governor in Council, upon the recommendation of the Minister, may by order reinstate the lease for the remainder of the term and upon the order being registered in the proper land registry office, the lease is reinstated subject to all interests, liens and charges to which it had been subject immediately prior to the termination.
New.

PART VI

SURFACE RIGHTS AND COMPENSATION FOR DAMAGE

Compensation
for surface
rights
damage

106.—(1) Every person who prospects, stakes a mining claim, performs assessment work or carries on mining operations on land,

- (a) in respect of which surface rights have been patented or leased with reservation of mines, minerals or mining rights to the Crown; or
- (b) that is legally occupied or used by a person who has made improvements thereon,

shall compensate the owner, lessee, occupant or user, as the case may be, for damages sustained by that person as a consequence of the prospecting, staking, assessment work or mining operations.

Exception

(2) Subsection (1) does not apply in respect of land for which a patent or lease of the mining rights has been issued before the disposition of the surface rights. *New.*

Claim
holder—
compensation
for damage

107.—(1) Every person who damages mineral exploration workings or claim posts, line posts, tags or surveyed boundary markers establishing a mining claim shall compensate the claim holder for damages sustained.

Limited
liability
of occupier

(2) Every person who uses land pursuant to a grant made under subsection 89 (3) (where existing lease), subsection 100 (4) (where existing exploratory licence of occupation) or subsection 101 (3) (where existing licence of occupation) shall be deemed to have willingly assumed all risks and is subject to the duty of care set out in subsection 4 (1) of the *Occupiers' Liability Act*.

R.S.O. 1980,
c. 322

Crown bound

(3) This section applies to the Crown. *New.*

108.—(1) A person claiming compensation under section 106 or 107 may apply to the Commissioner for an order awarding compensation. Compensation

(2) Any lessee or licensee who objects, at any time, to a grant made under subsection 89 (3), 100 (4) or 101 (3) may apply to the Commissioner for an order revoking or amending the grant. Limiting use of surface rights

(3) Pursuant to an application under subsection (1), the Commissioner may order compensation to be paid in the amount and manner that he considers proper. Order by Commissioner

(4) Pursuant to an application under subsection (2), the Commissioner may revoke or amend the grant. Idem

(5) In an order under this section, the Commissioner may order security to be given for payment of compensation and may order the suspension of such prospecting, assessment work or mining operations or other use on or of the land as is specified in the order. Prohibiting work pending settlement

(6) An order under subsection (3) or (4) may be made, without notice, where the Commissioner is satisfied that irreparable damage would be caused through delay. R.S.O. 1980, c. 268, s. 92, *amended*. Order

109.—(1) The Commissioner, on an application being made therefor, may make an order giving any person having an interest in or entitled to work mining rights, where it is required for exploration or in connection with the proper working of a mine or a mill for treating ore, Right over other land conferred by Commissioner

- (a) the right to open, construct, put in, maintain and use ditches, tunnels, adits, pipes, conduits, flumes and other works through, over or on any land for the drainage, conveyance or passage of water;
- (b) the right to discharge water on any land or by, through or into any existing means of drainage, whether natural or artificial;
- (c) the right to drain off, lower or divert the water of any lake, pond, river, stream, watercourse or any other water notwithstanding that the water or part thereof may be on the land of or owned by any other person or that any other person may have rights or interests in or to such water or the use thereof;

- (d) the right to collect and dam water notwithstanding that it may overflow other land;
- (e) the right to make or divert and use for or in connection with the working of his own mine and bring thereto for such use any specified water and to construct and maintain dams and other works and do all other things necessary or convenient therefor;
- (f) rights-of-way or passage through or over any land or water and the right to construct, improve, maintain and use suitable roads, tramways, aerial tramways, channels, waterways, passages and other means of transit and transportation upon, through or over any land or water together with such other rights of entry upon and use of land and water as may be necessary or convenient therefor;
- (g) the right to transmit electricity or any other kind of power or have it transmitted, through or over any land or water in any form or manner and to do everything necessary or convenient therefor;
- (h) the right to enter on and use for or in connection with the working of his own mine, sand and gravel pit or peat deposit, a specified area of other land; or
- (i) the right to deposit tailings, slimes or other waste products upon any land or to discharge them into any water, if the effects of such deposit or discharge is not injurious to health.

Conditions
for order

- (2) An order under subsection (1) shall not be made unless,
- (a) all damage caused thereby can be adequately compensated for;
 - (b) in the circumstances it seems reasonable to grant the right; and
 - (c) where prior damage has been suffered, compensation has been determined by the Commissioner and paid.

Protecting
land owners

- (3) In making an order under subsection (1), the Commissioner,
- (a) shall fix appropriate compensation or provide for the ascertainment thereof;

- (b) shall set out such provisions as he considers adequate for securing and protecting the rights and interests of persons whose land is affected;
- (c) may require the applicant to make grants or concessions to persons whose land is affected or construct works or do any other act; and
- (d) may make the order subject to such other conditions as he considers proper.

(4) Every applicant for an order under this section must file, in duplicate, with the Commissioner, Material to be filed on application

- (a) a clear and precise statement of the rights applied for, the land affected and the owner thereof so far as can be ascertained;
- (b) a map or plan of the locality showing the land and water involved; and
- (c) definite and detailed plans and specifications of the works or things proposed to be constructed or done.

(5) The Commissioner may authorize an applicant and his assistants to enter on the land of any other person to make such examinations and measurements as may be necessary for the purpose of subsection (4). Authority to enter land

(6) Any statement, map or plan may be amended, altered or modified at any stage of the proceeding pursuant to an order of the Commissioner. Amending plans, etc.

(7) When making an order under subsection (5), the Commissioner may give directions as to the notice to be given to the persons interested, the time and manner of service and the particulars to be furnished to such persons. Notice

(8) Subject to subsection (14), every person acquiring title to land affected by an order made under this section is bound by the order and is entitled to all benefits given and is liable for all obligations imposed by the order to the same extent as if he were the owner of the land at the time the order was made. Order binding on subsequent owner

(9) Subsection (8) applies in respect of land patented by the Crown or sold by a municipality for unpaid taxes. Idem

Description
and plan of
lands in
order

(10) Every order made under this section shall contain a proper registrable description of all land affected together with a plan of that land.

Copy to be
filed or
registered

(11) Every applicant obtaining an order under this section shall, where the land involved is unpatented, file a certified copy thereof in the recording office or where a patent or lease of the land involved has been issued, register a certified copy thereof in the proper land registry office.

Commis-
sioner
may change
order

(12) The Commissioner, on such terms as he considers just, may by subsequent order, at any time, vary or rescind any order made under this section.

Rights not
to be
exercised
until after
expiration
of time
for appeal

(13) Rights granted under an order made under this section shall not be exercised until the time for appealing from the order granting the rights has expired or, where an appeal is entered, until the appeal is disposed of.

Subsequent
purchaser

(14) An order made under this section is not valid against a purchaser for value without notice of it.

Notice of
hearing

(15) Notice of hearing of all applications under this section shall be given to the Minister, the Minister of Labour and the Minister of the Environment in the same manner as notice to any other interested person. R.S.O. 1980, c. 268, s. 189, *amended*.

PART VII

QUARRY PERMITS

Quarry
permit
required

110.—(1) No person shall take quarry material, sand, gravel or peat that is the property of the Crown unless he does so pursuant to and in accordance with a quarry permit.

Idem

(2) No person shall take quarry material, sand, gravel or peat that are not the property of the Crown from a bed, bank, beach, shore or water of any lake, river, stream or creek or from any bar or flat in any lake, river or stream or adjoining any channel or entrance to a lake, river, stream or creek unless he does so pursuant to and in accordance with a quarry permit. R.S.O. 1980, c. 268, s. 118 (1), *amended*.

Permit
issued by
Minister

111.—(1) The Minister may issue a quarry permit to any person who applies therefor and provides the information and material required by the Minister.

(2) The Minister may, where he is of the opinion that to issue a quarry permit is contrary to the public interest, refuse to issue a quarry permit. Refusal to issue permit

(3) Every person who is precluded from taking quarry material, sand, gravel or peat by subsection 110 (2) is entitled to be issued a permit by the Minister unless the Minister is of the opinion that, Entitlement to permit

(a) taking the quarry material, sand, gravel or peat will likely,

(i) significantly impair or interfere with the natural state or use of waters or the value or use of property,

(ii) cause significant erosion of or accretion to land, or

(iii) create a threat to roads, rights-of-way, structures or installations or to health or safety;

(b) the equipment that is proposed to be used to take the quarry material, sand, gravel or peat is not suitable for the purpose.

(4) Subject to subsection (5), a quarry permit may be issued for a term not exceeding five years. Term

(5) Where the Minister is satisfied that an applicant for a quarry permit requires the use of material in conjunction with the operation of a producing mine and that use will extend beyond five years, the Minister may issue the permit for a term exceeding five years. Idem

(6) No quarry permit shall be issued for sand and gravel where the sand and gravel has been included in a mining claim as a placer deposit. Where no permit to be issued

(7) Every quarry permit and the operations authorized by it are subject to such conditions, including rehabilitation, as are prescribed. Subject to conditions

(8) The Minister may, at any time, in writing, exclude the application of any prescribed condition in respect of any quarry permit for such time as he may specify. Exception by Minister

(9) In addition to the prescribed conditions, the Minister may include in a quarry permit such conditions as the Minister considers advisable. Other provisions

Renewal

(10) A quarry permit,

- (a) other than one issued under subsection (5), may be renewed for a term of not more than five years; or
- (b) issued under subsection (5) may be renewed for such term as the Minister considers appropriate.

Area
reduction

(11) Where a quarry permit is renewed, the renewed permit may cover a smaller area than the previous permit covered.

Transfer

(12) A quarry permit may be transferred only with the written consent of the Minister. R.S.O. 1980, c. 268, s. 118 (2-7), *amended*.

Classes of
permits

112.—(1) A Class A Permit authorizes the taking of quarry material, sand, gravel or peat to be used for resale or commercial purposes or in conjunction with a commercial undertaking.

Idem

(2) A Class B Permit authorizes a municipality to take quarry material, sand, gravel or peat for use by the municipality but not for resale or commercial purposes.

Idem

(3) A Class C Permit authorizes an individual or a group of individuals to take quarry material, sand, gravel or peat for a use that is not for resale or a commercial purpose. *New*.

Cancellation,
etc.,
of permit

113. The Minister may suspend or cancel or may refuse to renew a quarry permit where,

- (a) the permittee has contravened any provision of this Part or any of the conditions to which the permit is subject;
- (b) in the opinion of the Minister, a substantial amount of quarry material, sand, gravel or peat has not been removed under the permit during a continuous period of more than one year; or
- (c) he considers the continuation of operations under the permit to be contrary to the public interest. *New*.

Immediate
suspension of
operations

114. The Minister may direct, in writing, a permittee to immediately suspend operations under a quarry permit where, in the opinion of the Minister, the continuation of operations under the permit is not in accordance with the permit and will

likely cause damage or injury. R.S.O. 1980, c. 268, s. 119, *part, amended.*

115.—(1) Where the Minister,

Notice of
decision

- (a) refuses to renew a quarry permit or to issue a quarry permit under subsection 111 (3);
- (b) cancels a quarry permit;
- (c) suspends a quarry permit or operations thereunder;
or
- (d) reduces the area covered by the permit,

the Minister shall notify the applicant or permittee, in writing, of his decision and the reasons therefor.

(2) A notice under subsection (1) shall state that the applicant, permittee or former permittee is entitled to appeal to the Commissioner if that person delivers a notice of appeal to the Commissioner within fifteen days after the notice is served upon him. *New.*

Appeal

116.—(1) Where a permittee or former permittee appeals a refusal to renew or a cancellation, suspension or reduction, he may continue to operate under the permit until the appeal is finally disposed of.

Right to
continue
operations

(2) This section does not apply where operations are suspended under section 114. R.S.O. 1980, c. 268, s. 119, *part, amended.*

Exception

117.—(1) Every holder of a Class A or C Permit taking quarry material, sand, gravel or peat from Crown land shall pay the Treasurer of Ontario for the quarry material, sand, gravel or peat removed such royalty as the Minister may determine.

Royalty
payment

(2) In determining the royalty to be paid under subsection (1), the Minister shall have regard to the location, type and accessibility of the deposit, the amount of quarry material, sand, gravel and peat to be removed and the intended use of the product.

Factors
determining
payment

(3) The Minister may vary the royalty payable when a quarry permit is renewed.

Royalty on
renewal

Waiving
payment

(4) Where quarry material, sand or gravel is used in the public interest, the Minister may, at any time, waive the royalty payment. R.S.O. 1980, c. 268, s. 120, *part, amended*.

Security as
guarantee

118.—(1) The Minister may require a permittee to give security in the prescribed manner for the payment of the royalty and to guarantee rehabilitation of the quarry.

Rehabili-
tation

(2) Where the permittee does not rehabilitate the quarry as required, the Minister may order the rehabilitation with the cost thereof to be paid out of the security.

Debt to
Crown

(3) If the amount of the security is not sufficient to cover a default in royalty payment or the cost of rehabilitation, the amount of the shortfall is a debt owing to the Crown by the permittee and is recoverable by the Crown in a court of competent jurisdiction. R.S.O. 1980, c. 268, s. 120, *part, amended*.

Records

119.—(1) Every permittee shall keep detailed records of his operations including copies of all documents relating to sales and shipments and shall make available for inspection by any person authorized for the purpose all the accounts, records and documents related to his operation of the quarry in respect of which the permit has been issued. R.S.O. 1980, c. 268, s. 121, *amended*.

Power to
inspect

(2) For the purpose of subsection (1), the Minister may authorize an inspector,

- (a) to enter on any land in respect of which a quarry permit was issued or, during normal business hours, the business office of the permittee; or
- (b) to board any vessel that appears to be used in relation to a quarry operation,

and the inspector is entitled to and shall be provided with access to all production and sales records and documents kept in relation to the operation of the quarry. R.S.O. 1980, c. 268, s. 122, *amended*.

Returns

120. Where quarry material, sand, gravel or peat is removed from Crown land,

- (a) under a Class A or C Permit, the permittee involved shall, unless otherwise directed by the Minister, make a return on or before the tenth day of each month showing the quantity of material

removed during the preceding month accompanied by the required royalty payment; or

- (b) under a Class B Permit, the permittee shall make an annual return at the prescribed time showing the quantity of material removed during the preceding calendar year. R.S.O. 1980, c. 268, s. 123, *amended*.

121.—(1) The existence of a quarry permit does not preclude a holder of a prospector's licence from staking a mining claim on the land covered by the permit but a mining claim staked on the land is subject to the rights of the permittee. Right to stake claim

(2) Every quarry permit issued is subject to the rights of a mining claim holder whose claim has been recorded before the permit is issued. Prior mining claim

(3) Any dispute arising in respect of the application of subsection (1) or (2) may be referred to the Commissioner by any person having an interest therein and the Commissioner's decision in respect of the matter shall be final. R.S.O. 1980, c. 268, s. 124, *amended*. Reference to Commissioner

PART VIII

HEARINGS AND APPEALS

122.—(1) The recorder shall, in the first instance, hear and determine, Recorder to decide matter in first instance

- (a) every question concerning compliance with this Act and the regulations in respect of a mining claim; and

- (b) every dispute in respect of a mining claim,

arising before an application for a lease of the claim is filed unless the recorder, with the consent of the Commissioner, transfers the question or dispute to the Commissioner for his decision. R.S.O. 1980, c. 268, s. 131 (2), *amended*.

(2) The recorder may give directions for the conduct and carrying on of a proceeding before him and, in so doing, he shall adopt the cheapest and simplest methods of determining the questions arising that afford all parties an adequate opportunity of knowing the issues in the proceeding, presenting material and making representations on their behalf. Directions as to conduct of proceedings

Notation of
recorder's
determination

(3) The recorder shall enter in the records of the recording office a notation of every determination made by him. R.S.O. 1980, c. 268, s. 131, *amended*.

Appeal to
Commissioner

123.—(1) Any person affected by a determination or act by a recorder, done or neglected or refused to be done under this Act, may appeal to the Commissioner.

Idem

(2) Where it appears to be in the public interest, the Director or Supervisor on his behalf may appeal to the Commissioner any determination of a recorder without payment of a fee.

Appeal
instituted

(3) Any person entitled to appeal to the Commissioner may do so by,

(a) filing a notice in the office of the appropriate recorder; and

(b) serving a copy of the notice on all parties,

within fifteen days after the entry of the decision on the record or the doing or refusing to do the act that is the subject-matter of the appeal.

Idem

(4) The fifteen day limit referred to in subsection (3) does not apply where the appeal is in respect of an act neglected to be done.

Extension
of time

(5) The Commissioner may extend the time for filing notice under clause (3) (a) for a period of not more than fifteen days and the time for service under clause (3) (b) for such period as seems reasonable in the circumstances.

Substitute
service

(6) Where service under clause (3) (b) cannot be made without undue difficulty, the Commissioner may make such order for substitutional service as he considers just. R.S.O. 1980, c. 268, s. 133, *amended*.

Hearing by
Commissioner

124.—(1) The Commissioner shall hold a hearing in respect of,

(a) every matter, within his jurisdiction, referred to him under this Act; and

(b) every appeal to him that is permitted under this Act. R.S.O. 1980, c. 268, s. 134, *amended*.

Time for
hearing

(2) The Commissioner may fix such time for a hearing as will permit the matter to be disposed of as promptly as possi-

ble allowing adequate time to the parties to prepare their cases but, unless all parties consent thereto, the hearing shall not be held less than ten days after service of the notice of the hearing on the parties.

(3) The Commissioner shall select as the place for a hearing such place as he considers most convenient for the parties in the county or district or one of the counties or districts in which the land affected is situate unless it appears desirable that the hearing should be in some other county or district. R.S.O. 1980, c. 268, s. 135, *part, amended*.

Place for
hearing

125. The Commissioner may hear and dispose of any application not involving the final determination of the proceeding, either without notice or on notice, at any place he considers convenient and his decision on any such application is final but, where the Commissioner makes his decision without notice, he may subsequently reconsider and amend the decision. R.S.O. 1980, c. 268, s. 138, *amended*.

Interlocutory
applications

126.—(1) The Commissioner may,

- (a) give directions for having any matter heard and decided without unnecessary formality;
- (b) order the filing or serving of statements, particulars, objections or answers, the production of documents and things and the making of amendments;
- (c) order discoveries and examinations on affidavits;
- (d) give such other directions respecting the procedure and hearing as he considers proper; and
- (e) order or allow such substituted or other service as he considers proper.

Directions of
Commis-
sioner
re
proceedings

(2) The Commissioner may take or order the evidence of any witness to be taken at any place in or out of Ontario. R.S.O. 1980, c. 268, s. 137, *amended*.

Taking of
evidence

127. The Commissioner may obtain the assistance of experts who may, under his order, view and examine the property in question and, in giving his decision, he may give such weight to their opinion or report as he considers proper. R.S.O. 1980, c. 268, s. 139, *amended*.

Expert
assistance

128.—(1) The Commissioner, in addition to hearing evidence adduced by parties, may, in any matter before him, require and receive such other evidence as he considers

Commis-
sioner
may call for
evidence and
view property

proper and may view and examine the property in question and give his decision upon such evidence or view and examination or may appoint a person to make an inspection of the property and may receive as evidence and act on the report of the person so appointed.

Statement
of view or
special
knowledge

(2) Where the Commissioner proceeds partly on a view or on any special knowledge or skill possessed by him, he shall state, in writing, those matters that he took into account so as to enable a judgment to be formed of the weight that should be given thereto.

View only

(3) Where the parties consent, in writing, the Commissioner may proceed wholly on a view and, in that case, his decision is final. R.S.O. 1980, c. 268, s. 140, *amended*.

Disclosure
of evidence
to parties

129. Where the Commissioner receives any opinion, report or evidence under section 127 or 128 in any proceeding before him, the opinion, report or evidence shall be disclosed to the parties to the proceeding who, if they so request, shall be afforded an opportunity of cross-examining the person expressing the opinion, making the report or giving the evidence. R.S.O. 1980, c. 268, s. 141.

Decision on
the merits

130. The Commissioner shall give his decision upon the real merits and substantial justice of the case. R.S.O. 1980, c. 268, s. 142.

Security
for costs

131. Where the Commissioner considers a proceeding vexatious or where it is brought by a person residing out of Ontario, he may order that such security for costs as he considers proper be given and that in default of the security being given within the time specified or in default of speedy prosecution the proceeding be dismissed. R.S.O. 1980, c. 268, s. 143.

Costs

132.—(1) The Commissioner may, in his discretion, award costs to any party and may direct that the costs be assessed by the local registrar of the District Court or by one of the assessment officers at Toronto or may order that a lump sum be paid in lieu of taxed costs. R.S.O. 1980, c. 268, s. 147.

Counsel
fees

(2) The Commissioner has the same powers as an assessment officer of the Supreme Court with respect to counsel fees. R.S.O. 1980, c. 268, s. 148, *amended*.

Oral
decisions
R.S.O. 1980,
c. 484

133. Notwithstanding section 17 of the *Statutory Powers Procedure Act*, the Commissioner may render an oral decision with oral reasons. *New*.

134.—(1) Where the Commissioner makes an order, it shall be written but need not show upon its face that in any proceeding, notice was had or given or that any circumstances existed necessary to give jurisdiction to make the order.

Orders to
be written

(2) Every order of the Commissioner, with the exhibits, the statement, if any, of view or of special knowledge or skills and the reasons for his decision shall be filed in the appropriate recording office and the recorder shall record and give notice of the filing to the solicitors of the parties appearing by solicitor and to parties not represented by a solicitor. R.S.O. 1980, c. 268, s. 150, *amended*.

Document to
be filed
and recorded

135. Where not otherwise provided, an appeal lies to the Divisional Court from any decision of the Commissioner. R.S.O. 1980, c. 268, s. 154.

Appeal to
Divisional
Court

136. Where the hearing is to be held at a place where a court house is situate, the Commissioner has the right to use the court room, and where the hearing is to take place in a municipality in which there is a hall belonging to the municipality, but no court room, he has the right to use the hall. R.S.O. 1980, c. 268, s. 144.

Use of court
rooms, etc.

137. The evidence taken before the Commissioner shall be recorded and, if so required, copies or a transcript thereof shall be furnished upon the same terms as in the Supreme Court. R.S.O. 1980, c. 268, s. 146.

Recording
of evidence

138.—(1) Any party in a proceeding before the Commissioner concerning an interest in mining rights is entitled to obtain from the Commissioner a notice of interest.

Notice of
interest

(2) Every recorder who receives a notice of interest shall record the notice on the record of the mining claim involved and send a copy of it, by prepaid mail, to every recorded holder of an interest in the mining rights involved. R.S.O. 1980, c. 268, s. 75, *part, amended*.

Recording of
notice of
interest

139. The Commissioner may direct a recorder to, or the recorder, on his own initiative, may record on the record of any mining claim a notice that the status of the claim is in question. R.S.O. 1980, c. 268, s. 75, *part, amended*.

Notice that
status in
question

140. Upon a notice being recorded under section 139, all time requirements under this Act or regulations as to performing and recording work in respect of the mining claim involved are suspended and do not begin to run until a revocation of the notice has been recorded. *New*.

Effect of
notice

Order
vacating

141.—(1) Any person with an interest in a mining claim in respect of which a notice is recorded under section 138 or 139, may at any time, apply to the Commissioner for an order vacating the notice.

Notice of
order
vacating

(2) Every recorder who receives an order to vacate a notice shall send, by prepaid mail, a copy of the order to every recorded holder of an interest in the mining claim involved and shall record it on the record of the mining claim involved. R.S.O. 1980, c. 268, s. 75, *amended*.

PART IX

HAZARDOUS LANDS

Definitions

142. In this Part,

“lien” includes a lien created under section 161 of the *Mining Act*, being chapter 268 of the Revised Statutes of Ontario, 1980, or a predecessor of that section;

“owner”, when referring to the owner of a mine, means a person holding a freehold or leasehold interest in the mining rights in respect of land in, on or under which is situate a mine or any part thereof and includes a person who is a holder of a licence of occupation issued under this Act or a predecessor of this Act in respect of such land;

1984, c. 13 “professional engineer” means a person licensed as a professional engineer under the *Professional Engineers Act, 1984*;

“registered” means,

R.S.O. 1980,
cc. 230, 445

(a) registered under the *Land Titles Act* or the *Registry Act*, or

(b) in the case of land held under a licence of occupation, deposited at the office of the Minister,

and “register” has the corresponding meaning. *New.*

District mine
inspector

143.—(1) The Minister may designate, in writing, any employee of the Crown as a district mine inspector.

Powers of
district mine
inspector

(2) For the purpose of carrying out his duties and exercising his powers under this Part, a district mine inspector may,

(a) enter in or on any land or business premises at any reasonable time without notice or warrant;

- (b) make such investigations as he considers necessary in order to determine the nature and extent of any existing or potential hazards;
- (c) require the production of any drawings, specifications, licence, document, record or report and inspect, examine and copy the same;
- (d) on giving a receipt therefor, remove any drawing, specifications, licence, document, record or report inspected or examined for the purpose of making copies thereof or extracts therefrom, and upon making copies thereof or extracts therefrom, shall promptly return them to the person who produced or furnished them;
- (e) in any inspection, examination, inquiry or test, be accompanied and assisted by or take with him any persons having special, expert or professional knowledge of any matter, take photographs and take with him and use any equipment or materials required for the purpose; and
- (f) authorize entry in or on any land or business premises without warrant by any person for the purpose of performing work ordered under section 147 (protective measures by Minister). *New.*

144. Every owner of a mine, the operation of which is permanently or temporarily discontinued, shall take all necessary protective measures at the mine to prevent personal injury or property damage that is reasonably foreseeable as a result of the mine's existence. *New.*

Protective measures

145.—(1) Where, in the opinion of the Minister, the operation of a mine is discontinued, he may designate the mine as an inactive mine and shall register notice of his designation.

Designation of inactive mine

(2) Where the Minister designates a mine as an inactive mine, he shall serve notice of the designation on the owner of the mine and, where the owner of the land in, on or under which the mine is situate, is a different person, on that person.

Notice to owner

(3) Every person served with a notice under this section is entitled to a hearing by the Commissioner if he serves the Commissioner and Minister with notice, within thirty days after being served with a notice of the designation, that he requires a hearing in respect of the designation.

Notice requiring a hearing

Minister
is party

(4) The Minister is entitled to be a party to every hearing held in respect of an inactive mine designation.

Decision by
Commis-
sioner

(5) The Commissioner, at the conclusion of the hearing, shall confirm or rescind the designation made by the Minister.

Designation
revoked

(6) Where the Commissioner rescinds a designation of the Minister, the Minister shall, forthwith, register notice of the rescission and thereupon the designation made by the Minister is revoked. *New.*

Direction to
take
protective
measures

146.—(1) A district mine inspector, where he is of the opinion that protective measures should be taken or that measures taken are no longer adequate or appropriate, may by order direct the owner of an inactive mine to take the measures specified in the order within the period specified in the order.

Revocation
of order

(2) The registration of a notice of rescission under subsection 145 (6) revokes every order under this section in respect of the mine involved made prior to the registration. *New.*

Protective
measures
by Minister

147.—(1) Where an order of the district mine inspector is not complied with, the Minister may cause the ordered protective measures to be taken and shall pay the cost incurred.

Protective
measures for
immediate
hazards

(2) Where, in the opinion of a district mine inspector, an inactive mine constitutes an immediate hazard to persons or property, the district mine inspector may cause such protective measures as he considers necessary to be taken and the Minister shall pay the costs incurred.

Recovery of
cost

(3) Unless the Commissioner determines that it was not necessary to incur them, costs paid under subsection (1) or (2) or such other amount as may be determined by the Commissioner, including interest thereon at the prescribed rate, are a debt due to the Crown by the owner of the mine at the time the costs were incurred and are recoverable by the Crown in a court of competent jurisdiction.

Application
to
Commis-
sioner

(4) Any person liable for costs under this section may apply to the Commissioner to determine whether it was necessary to incur the costs and, if so, the amount that it was necessary to incur.

Lien

(5) Costs referred to in subsection (3), including interest thereon at the prescribed rate, are a lien upon mining rights and surface rights used in conjunction with the mine and all adjoining mining rights and surface rights owned by the owner of the mine and the Minister may register notice of the lien.

(6) Upon notice of a lien being registered under this section, the rights subject to the lien shall not be transferred and any purported transfer in contravention of this subsection is void. Transfer prohibited

(7) The Minister, on such conditions as he considers proper, may register, Idem

(a) a postponement of lien and, on registration, the lien is suspended for the period and in accordance with the conditions therein described; or

(b) a cessation of lien.

(8) A lien under this section may be realized by the sale of any or all of the interests subject to it. *New.* Realization of lien

148. No person shall alter any protective measures taken in accordance with this Part except with the prior written consent of the Minister. *New.* Retaining protection

149. Where protective measures ordered under this Part are done, the Minister, on request, shall provide a certificate stating that the requirements of this section have been complied with to the date of the certificate and the certificate may be registered. *New.* Certificate that requirements met

150.—(1) The Minister may designate any land as limited use land where, in his opinion, use of the land for purposes other than mining is potentially hazardous. Designation as limited use land

(2) Where the Minister proposes to designate land as limited use land, he shall serve notice of his proposal on every person appearing in the records of the land registry office as having an interest in the surface rights and shall register notice of his proposed designation. Notice of proposal to designate

(3) Where the Minister registers notice of a proposed designation, he may make public any relevant information obtained from a mine plan submitted under this Act or a predecessor of this Act. Public disclosure

(4) Every person who is served with a notice under subsection (2) is entitled to a hearing by the Commissioner if he serves the Commissioner and Minister with notice requiring a hearing, within thirty days after being served with a notice under subsection (2). Notice requiring hearing

(5) If a notice requiring a hearing is not served as set out in subsection (4) or after a hearing the Commissioner determines Minister may designate if no hearing required

that the proposal should proceed, the Minister may designate the land as limited use land and, where he does so, shall register the designation forthwith.

Subsequent
right to
require a
hearing

(6) Where a designation is made under subsection (5), any person with an interest in the surface rights of the land involved may, at any time, require a hearing by serving the Commissioner and Minister with notice to that effect.

Approved
studies and
tests

(7) Any person who requires a hearing under subsection (4) or (6) may submit to the Minister a plan for the performance of studies and tests to determine the existence and exact location of mine workings underlying the land and the condition of the rock between the mine workings and the surface and, if the Minister approves, that person may carry out the studies and tests.

Revocation
of
designation

(8) Where, on the basis of studies and tests done under subsection (7) the Minister determines, or, after a hearing the Commissioner determines, that the land should not be designated as limited use land, the Minister shall forthwith register revocation of the notice of the proposed designation or of the designation, as is appropriate.

Reimburse-
ment for
costs

(9) Where a revocation is registered, the Minister shall reimburse the person who paid for any studies and tests used in arriving at a determination, the cost thereof. *New.*

Limited use
land
restrictions

151.—(1) No person who has an interest in the surface rights of land designated as limited use land shall cause or allow,

- (a) any change in the existing use of the land;
- (b) any addition to an existing structure or building located on the land; or
- (c) the construction of a structure or building on the land,

without the prior written approval of the Minister.

Minister may
require
reports

(2) Where the Minister receives a request for approval under subsection (1), he may require such reports as he considers necessary, including a report from a professional engineer, setting out such particulars as he needs to make a decision. *New.*

Examination
of
documentary
evidence

152. Where the Commissioner holds a hearing under this Part, the person requiring the hearing may examine, before

the hearing, any written evidence that will be produced and any report, the contents of which will be given in evidence at the hearing. *New.*

153. A designation under this Part is not a regulation under the *Regulations Act*. *New.*

Designation
not
regulation
under
R.S.O. 1980,
c. 446

Offence

154.—(1) Every person who contravenes any provision of this Part is guilty of an offence and, on conviction, is liable to a fine of not more than \$25,000 or to imprisonment for a term of not more than three months or to both.

(2) Where the Minister has given written notice to a person that there is a contravention of any provision in this Part, that person, on conviction, is liable to a further fine of not more than \$100 for every day that the offence continues after the notice.

Additional
penalty for
continuing
offence

(3) Where, in committing an offence under this Part, a person does or neglects to do any act, the commission or neglect of which could reasonably be foreseen as endangering the safety of any person, the offending person is liable, in addition to any other penalty under this Act, to imprisonment for a term of not more than three months. R.S.O. 1980, c. 268, s. 176, *amended*.

Imprisonment

PART X

MINING LAND TAX

155. In this Part,

Definitions

“municipality” means a city, town, village, township or county, the inhabitants of which are a body corporate within the meaning and for the purposes of the *Municipal Act* and includes an improvement district, district municipality and regional municipality and The Municipality of Metropolitan Toronto;

R.S.O. 1980,
c. 302

“tax” means a tax under this Part. R.S.O. 1980, c. 268, s. 201, *amended*.

156. Except as provided in this Part,

Liability
for tax

- (a) all patented land in territory without municipal organization granted, held or used for mining purposes;

- (b) all mining rights in, on or under patented land in a municipality granted, held or used for mining purposes; and
- (c) all mining rights in, on or under patented land that are severed or held separate from the surface rights,

are subject to tax and the owner shall pay the prescribed annual tax on or before the 15th day of March in the year in which it is imposed. R.S.O. 1980, c. 268, s. 204, *amended*.

Exemptions
from tax by
Minister

157.—(1) The Minister may exempt land or mining rights from the tax where,

- (a) the land is subdivided by a registered plan or reference plan into lots or parcels for city, town, village or summer resort purposes;
 - (b) the land is being used for a public park or cemetery or for educational or religious purposes;
 - (c) the land is in *bona fide* use for farming or other agricultural purposes; or
 - (d) the mining rights in, on or under land situated south of the French River, Lake Nipissing and the Mat-tawa River, including the Territorial District of Manitoulin, that are held, used or developed solely for the production of natural gas or petroleum.
- R.S.O. 1980, c. 268, s. 205 (1), *amended*.

Idem

(2) Where the mining rights that were not subject to tax become subject to tax because the surface rights thereof have been severed from the mining rights for a public road, highway or public utility, the Minister may exempt the mining rights so severed from the tax during such time as he is satisfied that the mining rights are not being used or held for mining purposes. R.S.O. 1980, c. 268, s. 218 (2), *amended*.

Where
mining rights
taxable only

(3) Where the Minister is satisfied that the surface rights of land referred to in clause 156 (a) are being used for purposes other than that of mining or the mining industry, he may exempt the surface rights from the tax. R.S.O. 1980, c. 268, s. 206, *amended*.

Decision
final

(4) An exemption by the Minister under this section is final but the Minister may reconsider his decision where the circumstances on which he based his decision change. R.S.O. 1980, c. 268, s. 205 (2), *amended*.

158. The Minister shall have an annual tax roll prepared showing the land and mining rights subject to tax. R.S.O. 1980, c. 268, s. 207, *amended*. Tax roll

159. The Minister may register in the proper land registry office a notice of liability to taxation in respect of any land or mining rights subject to tax. R.S.O. 1980, c. 268, s. 208, *amended*. Registration of notice of liability

160.—(1) Any person may apply to the Commissioner to determine whether he is liable to pay tax or to determine the amount of tax payable, as the case may be. Determining liability for tax

(2) The Minister may refer to the Commissioner any question as to whether any land or mining rights are wrongfully omitted from the tax roll. Omission from tax roll

(3) The Minister is a party to every proceeding before the Commissioner under this section. R.S.O. 1980, c. 268, s. 210, *amended*. Minister to be party

161. Where tax is unpaid on the 15th day of March in the year in which it is payable, a penalty at the prescribed rate together with prescribed costs, where applicable, shall be added thereto, accumulating annually thereafter on any part that remains unpaid and, for all purposes, the amount of the tax and penalty are considered to be the tax due and payable under this Part. R.S.O. 1980, c. 268, s. 215, *amended*. Penalty for default

162. All arrears of acreage tax and penalties under a predecessor of this Act are arrears of tax for the purpose of this Part. *New*. Arrears under previous Act

163.—(1) All tax, penalties and costs payable under this Part constitute a special lien on the land or mining rights against which the tax is levied in priority to every claim, privilege, lien or encumbrance of any person, whether the right of that person has accrued before or after the attaching of the special lien. Special lien and priority of the tax

(2) The priority of a special lien is not lost by any omission, error or failure to register. Idem

(3) A special lien may be realized by the sale of any or all property subject to it. R.S.O. 1980, c. 268, s. 216, *amended*. Realization of lien

164. If the tax levied on any land or mining rights is not paid when due, the Minister may apply to a court of competent jurisdiction for recovery of the tax together with penalties and costs. R.S.O. 1980, c. 268, s. 217, *amended*. Right of action for tax

Tax arrears

165.—(1) Where tax in respect of land or mining rights is two years in arrears, the Minister may send notice of the arrears to every person who appears, from the land registry office records, to have an interest in the land or rights, addressed to that person at the address shown for that person in the land registry office records or such latter address as is known to the Minister.

Who may pay

(2) Any person who receives a notice under subsection (1) may pay the taxes outstanding. R.S.O. 1980, c. 268, s. 212, *part, amended*.

Declaration of forfeiture

166.—(1) Where any taxes, penalties or costs remain unpaid six months after the notice of arrears has been sent, the Minister may order all interest in land or mining rights in respect of which the default exists forfeited.

Registration of certificate

(2) Upon a certificate of forfeiture being registered, all interest in the land or mining rights described in the certificate is forfeited to the Crown.

Registration conclusive

(3) Registration of a certificate of forfeiture is conclusive evidence of the forfeiture to and vesting in the Crown of the interest in the land or mining rights described therein notwithstanding any defect or omission.

Cancelling forfeit

(4) The Minister may order the cancellation of the forfeiture and where he does so, shall issue a certificate of cancellation of forfeiture. R.S.O. 1980, c. 268, s. 212, *part, amended*.

Claim for tax payment by co-owner

167.—(1) Where an interest in land or mining rights subject to tax is held by co-owners and one co-owner has not paid his proportionate share of the tax for the four years immediately preceding the application, the Commissioner, on the application of a co-owner who has paid the tax, may make an order requiring the delinquent co-owner to pay, within three months after the date of the order or such further time as the Commissioner may fix, his proportion of the tax to the co-owner who has paid the tax together with interest at the prescribed rate compounded yearly or, in default of payment, vesting the interest of the delinquent co-owner in the applicant.

Interpretation

(2) For the purpose of this section, a corporation with share capital and shareholders thereof are considered to be co-owners. R.S.O. 1980, c. 268, s. 211, *part, amended*.

PART XI

REFINERIES

168. In this Part,

Definitions

“precious metal” means silver, gold, platinum, palladium, rhodium, iridium, ruthenium, osmium and alloys and partially refined metal containing one or more of these metals;

“refinery” means apparatus or equipment, including ancillary equipment, fluxes and reactants, that may be used for refining, retorting, smelting, assaying or treating of mineral, partially refined metal, alloy, metallic scrap, jewellery or other substance for the purpose of recovering therefrom or of determining the quantity therein of any precious metal, but not including,

- (a) equipment or apparatus for effecting the physical separation of finely divided precious metal from naturally occurring unconsolidated deposits of sand or gravel if operated by a licensed prospector or his agent during prospecting or evaluation of a deposit, or
- (b) equipment or instruments for determining or estimating the precious metal content of a sample by technical methods that do not result in the separation of the precious metal from the ore or substance constituting the sample. R.S.O. 1980, c. 268, s. 164, *amended*.

169.—(1) Subject to subsection (2), no person shall have a refinery in his possession or under his control or on land of which he is the owner, licensee, lessee or tenant unless there is a refinery licence for that refinery.

Refinery
licence
required

(2) A refinery licence is not required for a refinery for which a certificate of exemption has been issued. R.S.O. 1980, c. 268, s. 165, *amended*.

Exception

170.—(1) The Minister may issue a refinery licence to any person who applies therefor.

Issue of
refinery
licence

(2) The Minister may issue a certificate of exemption in respect of a refinery where he is satisfied that the refinery,

Certificate
of exemption

- (a) shall not be maintained or used for refining, retorting, smelting, assaying or treating an ore, mineral or substance for the purpose of recovering there-

from or determining the quantity therein of any precious metal; or

(b) shall be used for educational purposes only.

Refusal to
issue, etc.

(3) The Minister may refuse to issue or to renew a refinery licence or a certificate of exemption or may cancel a refinery licence or certificate of exemption where he considers it in the public interest to do so.

Term of
licence and
certificate
of exemption

(4) Every refinery licence and certificate of exemption expires on the 31st day of March next following the issue thereof. R.S.O. 1980, c. 268, ss. 166, 168, *part, amended*.

Reference to
Commis-
sioner
for hearing
and report

171.—(1) Where the Minister proposes to refuse to issue or renew or to cancel a refinery licence or certificate of exemption, he shall refer the matter to the Commissioner.

Report

(2) Where a matter has been referred to him under subsection (1), the Commissioner shall make a report to the Minister setting out,

- (a) his findings of fact and all information or knowledge used by him in reaching his recommendations;
- (b) any conclusions of law he has arrived at relevant to his recommendations; and
- (c) his recommendations concerning the issue, renewal or cancellation, as the case may be,

and shall send a copy of his report to the person to whom it relates.

Decision of
Minister

(3) After considering the Commissioner's report, the Minister shall make his decision concerning the issue, renewal or cancellation and shall notify the applicant, licensee or certificate holder of his decision and the reason therefor and the Minister's decision in this respect is final. R.S.O. 1980, c. 268, s. 167, *amended*.

Use of
refinery

172. No person who has under his control a refinery in respect of which there is a certificate of exemption shall permit the refinery to be used for refining, retorting, smelting, assaying or treating of any mineral or substance for the purpose of recovering therefrom or determining the quantity therein of any precious metal. R.S.O. 1980, c. 268, s. 168 (2), *amended*.

173. The Minister may direct the Commissioner to conduct an inquiry into a charge that a person has contravened a provision of this Part and the Commissioner, for the purposes of the inquiry, has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to the inquiry as if it were an inquiry under that Act. R.S.O. 1980, c. 268, s. 171, *amended*.

Inquiry by
Commis-
sioner

R.S.O. 1980,
c. 411

174. Every person who contravenes any provision of this Part is guilty of an offence and, on conviction, is liable to a fine of not more than \$10,000 or to imprisonment for a term of not more than one year, or to both. R.S.O. 1980, c. 268, s. 169, *amended*.

Penalty

PART XII

GENERAL

175.—(1) The *Construction Lien Act, 1983* applies to mining claims, mining land and works connected with either but does not apply to quarries.

Lien for
wages—
application of
1983, c. 6

(2) Where the mining rights in Crown land are recorded as a mining claim, the registration provided for in the *Construction Lien Act, 1983* shall be in the recording office.

Registration
of lien with
recorder

(3) Where a licence of occupation or an exploratory licence of occupation has been issued, the registration provided for in the *Construction Lien Act, 1983* shall be in the office of the Minister.

Registration
of lien
with Minister

(4) Where the action is for wages in connection with mining land, a mining claim or works connected with either, in addition to the rights and remedies afforded by the *Construction Lien Act, 1983*, the claimant has a lien on all other property of the holder of the freehold or leasehold interest in the mining land or of the mining claim holder that is in, on or under the land involved for a sum not exceeding thirty days wages and this claim may be enforced under this Act.

Lien where
action for
wages

(5) Where the Commissioner is satisfied that a claim for a lien recorded under this section is not made in good faith or is made for some improper purpose or where the owner or holder is unduly embarrassed thereby, he may make an order cancelling the lien upon such terms as to security as he considers proper.

Cancellation
of lien

(6) A lien does not affect the rights of the Crown. R.S.O. 1980, c. 268, s. 185, *amended*.

Rights of
Crown

Corporate
land
forfeited
to Crown on
dissolution

176.—(1) Where a corporation is dissolved, all interests in mining land or mining rights of the corporation that have not been disposed of at the date of its dissolution are, notwithstanding anything in any other Act, thereupon forfeited to and vested in the Crown, free from every right, title, interest or claim therein or thereto.

Where 1982,
c. 4,
s. 243 (2)
does not
apply

(2) Subsection 243 (2) of the *Business Corporations Act*, 1982 does not apply and shall be deemed to never have applied to interests in mining land and mining rights. *New.*

Lands and
easements
revert to
Crown

177. Where under this Act a dominant tenement reverts to and becomes vested in the Crown, any easement appurtenant thereto passes to the Crown and, where a servient tenement reverts to and becomes vested in the Crown, any easement to which the servient tenement is subject is not affected. R.S.O. 1980, c. 268, s. 219.

Administra-
tion
of reverted
land or rights

178. Where freehold or leasehold interest in mining land or mining rights reverts, other than by transfer, to the Crown, the land or rights may be dealt with as unpatented Crown land under any Act administered by the Minister. R.S.O. 1980, c. 268, s. 195, *amended.*

Interpretation

179.—(1) In this section, “highway” includes road allowance. R.S.O. 1980, c. 268, s. 197, *amended.*

Mineral
rights under
roads

(2) The corporation of any municipality in that part of Ontario lying south of the French River, Lake Nipissing and the River Mattawa, may sell or lease the right to take minerals found on or under any highway over which the municipality has jurisdiction.

In northern
part of
Province

(3) In the parts of Ontario not described in subsection (2), the mining rights in, on or under highways are vested in the Crown and may be disposed of under this Act.

Notice
requirement

(4) No sale or lease under subsection (2) may take place until after notice of the intended by-law authorizing the sale or lease has been posted in six public places in the neighbourhood of the highway for at least one month before the time set for considering the by-law.

Rights of
adjoining
land
owners

(5) Where mining land adjoins a highway and the mineral vein or deposit thereon extends into or under the highway, its owner has the right to purchase or lease the mining rights in, on or under the highway subject to this Act or, where there are mining lands on both sides of a highway, the right to purchase or lease accrues to the owner on each side thereof in respect of the half of the highway adjoining his land.

(6) Every conveyance or lease under this section is subject to the condition that the right of the public to travel over the highway will not be interfered with unless a comparable substituted road is provided by the grantee or lessee. Right to public travel preserved

(7) Subsections (4) and (5) do not apply to highways on land granted before the 1st day of May, 1904 by the Crown under a predecessor of this Act or by a grant wherein the mines and minerals were not reserved to the Crown. *New.* Exception

180.—(1) Every owner of mining land on or under which is situated a mine, plant, quarry or other works, including brine wells and storage facilities, on or before the 31st day of March in every year, shall send to the Minister, on forms supplied by the Ministry, a correct return for the year that ended on the 31st day of December immediately preceding, showing, Statistical returns

- (a) the number of persons ordinarily employed below and above ground respectively;
- (b) the total amount of wages paid during the year;
- (c) the quantity, in standard weight, of the minerals processed and of the salt, peat, sand, gravel or unprocessed mineral that has been sold, treated or used during the year and the value or estimated value thereof; and

(d) such other particulars as are prescribed.

(2) If required by the Minister, an owner of land on or under which is situate an operating mine from which minerals are being removed shall make a monthly or quarterly return providing the information required under subsection (1). Monthly or quarterly returns

(3) Every person who fails to comply with subsection (1) or a requirement of the Minister under subsection (2) or makes a return that is, to his knowledge, false in any particular is guilty of an offence and, on conviction, is liable to a fine of not more than \$1,000. *R.S.O. 1980, c. 268, s. 163, amended.* False return, etc.

181.—(1) All interests in mining land or mining rights patented, leased or otherwise disposed of are subject to the condition that all minerals therefrom shall be treated and refined in Canada so as to yield refined metal or other product suitable for direct use in the arts without further treatment. All minerals to be treated in Canada

(2) Where there is a contravention of the condition set out in subsection (1), the Lieutenant Governor in Council, by Order in council

order in council, may declare the interest in the mining land or mining rights forfeited to the Crown.

Rights vest
in Crown

(3) On an order in council made under subsection (2) being registered in the proper land registry office or, in the case of a licence of occupation, deposited in the office of the Minister, the interest described therein reverts to and becomes vested in the Crown free from every interest or claim.

Determi-
nation
by Minister

(4) For the purposes of subsection (1), the Minister may determine the stage of refinement at which any mineral substance is refined metal or other product suitable for direct use in the arts without further treatment.

Exemptions

(5) The Lieutenant Governor in Council may exempt any mining land or mining rights from the operation of this section for such period of time and subject to such conditions as the Lieutenant Governor in Council considers proper. R.S.O. 1980, c. 268, s. 104, *amended*.

Conditions
under which
trees may
be cut

182.—(1) A holder of a mining claim or of a lease may, with the permission of the Minister and subject to such conditions and payment of fees as the Minister considers reasonable, cut trees on the land involved as may be necessary for building, fencing or fuel purposes or for any other purpose necessary for the development or working of the minerals thereon.

Idem

(2) The Minister, where there is a licence or permit from the Crown to cut timber on land that is subject to a mining claim or a lease of mining rights, may grant the holder of the claim or lease permission to cut trees on condition that he compensate the timber licensee or permittee for the trees cut.

Determi-
nation
of disputes

(3) Where a dispute arises as to the value or quantity of the trees cut pursuant to permission given by the Minister, the Minister shall determine the dispute and his decision is final. R.S.O. 1980, c. 268, s. 105, *part, amended*.

Right to
remove
property

183.—(1) Any person who has buildings, structures, machinery, chattels, personal property or minerals he has extracted therefrom including minerals in the form of slimes or tailings on land in respect of which mining rights were abandoned, surrendered, cancelled or forfeited, may within six months after the abandonment, surrender, cancellation or forfeiture or within such further time as is fixed by the Commissioner, remove them and, in default of so doing, everything not removed vests in the Crown.

(2) Subsection (1) does not apply to permit minerals, including slimes and tailings to be taken from a mining claim referred to in subsection (1) that had not been patented. R.S.O. 1980, c. 268, s. 64, *amended*. Exception

184.—(1) Every person who drills or causes drilling to be done on an unpatented mining claim or on patented lands where assessment work credits are filed on adjoining unpatented claims shall store, in containers held in accordance with subsection (2), all drill core and splits obtained. Drill core and splits to be kept

(2) The containers shall be clearly labelled as to claim number, hole number and depth interval of drill runs and stored in sequence of content recovery. Containers

(3) Every person who stores drill core and splits under subsection (1) shall notify the Minister, in writing, of the place where the containers are stored together with a description of the drill hole locations. Notifying Minister

(4) No person shall,

(a) intentionally abandon, discard, dump, destroy or otherwise reduce the technical value of drill core; or Drill core not to be destroyed or removed

(b) remove from Ontario any drill core,

without the permission of the Minister.

(5) Where permission required under subsection (4) is requested, the Minister shall have twelve months in which to examine or selectively sample the core and where the Minister does not, within twelve months after the request, refuse permission, permission shall be deemed to have been given. Permission

(6) Clause (4) (a) does not apply to drill hole sections submitted for assaying or testing or microscopic, metallurgical and beneficiation studies. Exception

(7) Where complete destructive testing of exploration drill core is performed, a log of the rock descriptions shall be submitted to the Minister by the holder of the mining claim involved. *New.* Test results

185.—(1) Where land used for the impoundment of tailings ceases to be so used, the owner of the mine involved shall plant and maintain vegetation or otherwise stabilize the tailings area. Stabilization of tailings

Stabilization
plans

(2) Every owner of a mine who uses land for tailings shall keep at the mine site and shall turn over for inspection to any inspector who asks to see the plan, a stabilization plan showing the nature, location and extent of all stabilization that has been completed and that is proposed.

Security

(3) The Minister may require any owner to whom this section applies to give security in the prescribed manner to guarantee stabilization required under subsection (1).

Stabilization

(4) Where a mine owner does not comply with subsection (1), the Minister may order the stabilization to be done with the cost thereof to be paid out of the security.

Debt to
Crown

(5) If the amount of security given under subsection (3) is not sufficient to cover the cost of rehabilitation, the amount of the shortfall is a debt owing to the Crown by the owner of the mine and is recoverable by the Crown in a court of competent jurisdiction.

Definition

(6) In this section, "owner" has the same meaning as in Part IX. *New.*

Offences

186. Every person who,

- (a) defaces, alters, removes or disturbs any post, tag, stake, picket, boundary line, figure, working or other mark properly placed, standing or made under this Act or the regulations or a predecessor of this Act or regulations under that Act;
- (b) wilfully obstructs any person in the execution of his duty under this Act;
- (c) does not rehabilitate a quarry in accordance with the regulations;
- (d) does not allow the Commissioner, a person appointed by him or an inspector the necessary means to make an entry, inspection, examination or inquiry in relation to a mining claim or a quarry;
- (e) obstructs a person in the exercise of a right granted under an order made under this Act;
- (f) removes minerals, quarry material or other materials including clay and earth without authority;
- (g) makes a material change in the wording or numbering of a prospector's licence after its issue;

- (h) makes a false statement in an application, certificate, report, statement or other document filed, deposited or made under this Act or the regulations;
- (i) does not obey an order of the Commissioner or recorder made under this Act; or
- (j) contravenes any provision of this Act or any regulation for the contravention of which no other penalty is provided,

is guilty of an offence and, on conviction, is liable to a fine of not more than \$10,000. R.S.O. 1980, c. 268, s. 172, *amended*.

187. No prosecution may be instituted for an offence Prosecutions
against this Act except,

- (a) by or by leave of the Minister, Commissioner, Director or the recorder; or
- (b) by direction of the county or district Crown Attorney. R.S.O. 1980, c. 268, s. 177 (1), *amended*.

188.—(1) The Lieutenant Governor in Council may make Regulations
regulations,

1. prescribing forms and providing for their use;
2. requiring the payment of fees to the Minister, Commissioner and recorders and prescribing the amounts thereof;
3. prescribing and governing the method of staking mining claims and creating exceptions respecting irregular areas, the shape, size and area of mining claims in unsubdivided areas and subdivided townships, the standards and inscriptions of claim posts and tags and the blazing or alternative method of identifying boundary lines and prohibiting the use of used posts or material and by sketches illustrating such matters;
4. prescribing information to be shown on applications;
5. prescribing information to be shown on sketches or plans accompanying applications;

6. governing the use and expiry of tags;
7. defining, establishing and limiting types of assessment work, prescribing the dollar value of assessment work to be performed in any year on a mining claim;
8. governing the performance of additional assessment work on mining claims exceeding the prescribed maximum areas and extension of time therefor;
9. governing applications;
10. prescribing the contents of and supporting information in reports;
11. permitting and governing the distribution of assessment work;
12. prescribing annual rents and fees and minimum rents and fees payable under leases of mining land and mining rights and licences to hold mining rights and the adjustment of the rents and fees;
13. governing the issue, refusal and cancellation of licences of occupation and leases;
14. prescribing conditions, reservations and provisions to which licences of occupation and leases are subject;
15. governing the rehabilitation of quarries;
16. governing the opening, construction, maintenance and use of roads to, through or over mining claims, mining locations or land sold or leased as mining land or recorded under this Act or any predecessor of this Act, and for the opening, construction, maintenance and use of ditches, aqueducts, or raceways through, over or on such land for the conveying and passage of water for mining purposes;
17. prescribing protective measures in respect of inactive mines;
18. respecting the issue of licences to explore for and leases to produce natural gas and petroleum from Crown land, including,

- i. fees, rents and royalties payable in respect thereof, and
 - ii. the bonding of licensees and the conditions of forfeiture of bonds;
19. governing the sinking, boring and drilling of brine wells and product storage wells;
20. governing the engineering designs of salt solution mining caverns and storage facilities and the volumes of material injected therein or removed therefrom;
21. respecting the submission of logs for brine wells and product storage wells, analysis or work carried out in the wells, including the measurement of injection or production of fluids from the salt solution mining or operations of storage facilities;
22. respecting monuments installed for the measurement of subsidence caused by salt solution mining and the operation of storage facilities;
23. governing the recording and submission of surveys and logs to determine the size and configuration of underground caverns created by salt solution mining or used for storage facilities;
24. governing the rehabilitation of brine wells, salt solution mining caverns, product storage wells and storage facilities;
25. respecting the submission of annual reports and the contents thereof;
26. prohibiting or regulating the removal of any material from any bed, beach, shore or waters of or adjacent to any part of the shores of Lake Erie, Lake Ontario or Lake Huron, from any land covered by the waters of any of those lakes that is adjacent to the shore from any sandbar or flat in any of those lakes or any channel or entrance to any of those lakes;
27. prescribing any matter that by this Act is required or permitted to be or referred to as prescribed by the regulations.

Idem

(2) Any regulation may be general or particular in its application. R.S.O. 1980, c. 268, s. 190, *amended*.

PART XIII

SALT SOLUTION MINING AND STORAGE FACILITIES

Definitions

189. In this Part,

“brine well” means a well sunk, bored or drilled into the ground to a salt formation;

“permit holder” means a holder of a permit issued under this Part;

“product storage well” means a well sunk, bored or drilled into the ground to a salt formation through which a product is stored or recovered;

“salt solution mining” means the sinking, boring or drilling of a brine well and the extraction of salt in solution from underground salt formations;

“salt solution mining cavern” means a cavern formed in a salt formation from salt solution mining;

“storage facility” means a product storage well and a connecting cavern used to store hydrocarbon products. *New.*

Permit
required

190.—(1) No person shall carry on salt solution mining or operate a storage facility except under the authority of a permit issued under this Part and in accordance with this Part and the regulations.

Application
delayed

(2) Subsection (1) does not apply until six months after this Act comes into force. *New.*

Permit issued
by Minister

191. The Minister may issue permits to carry on salt solution mining or to operate a storage facility. *New.*

Refusal to
issue permit

192. The Minister may refuse to issue a permit where he considers that to issue the permit is contrary to the public interest. *New.*

Suspension
or
cancellation
of permit

193. The Minister may suspend or cancel a permit where,

- (a) the permittee has contravened any provisions of this Part or any of the conditions to which the permit is subject; or

- (b) he considers the continuation of operations under the permit to be contrary to the public interest.
New.

194.—(1) The Minister may order any permit holder to immediately suspend operations where the continuation of operations is not in accordance with the permit and he considers it will likely cause harm and where he does so, the permit holder shall immediately suspend his operations. Immediate suspension of operations

(2) Subject to an appeal under subsection 195 (2), the Minister's decision to suspend operations is final. *New.* Idem

195.—(1) Where the Minister proposes to refuse to issue a permit or to suspend or cancel a permit, he shall give the applicant or permit holder written notice of his proposal and the reasons therefor. Proposal to refuse, suspend or cancel

(2) Any person who receives a notice under subsection (1) or an order to suspend operations may appeal to the Commissioner by serving a notice of appeal on the Commissioner within fifteen days after receiving the notice or the order, as the case may be. Appeal

(3) After the Commissioner holds a hearing pursuant to an appeal, he shall submit a recommendation to the Minister in respect of the subject-matter of the appeal. Commissioner's report

(4) The Minister, after considering the Commissioner's recommendation, may, Minister's decision

(a) issue or refuse to issue a permit;

(b) suspend or cancel a permit; or

(c) revoke an order of immediate suspension of operations,

as the case may be, and every decision the Minister makes in this respect is final. *New.*

196.—(1) Every permit issued under this Part is subject to prescribed conditions. Permits subject to conditions

(2) The Minister may at any time, in writing, exclude the application of any prescribed condition in respect of any permit. Exception by Minister

(3) The Minister may at any time make a permit subject to such conditions as he considers advisable. *New.* Other provisions

Security as
guarantee

197.—(1) The Minister may require a permit holder to give security in the prescribed manner to guarantee compliance with the conditions of the permit or any of the provisions of this Part.

Ordering
work

(2) Where the permit holder does not comply with the conditions of the permit or this Part, the Minister may order done the things required to be done with the cost thereof to be paid out of the security.

Debt to
Crown

(3) If the amount of the security is not sufficient to cover the cost of the work done under subsection (2), the amount of the shortfall is a debt owing to the Crown by the permit holder and is recoverable by the Crown in a court of competent jurisdiction. *New.*

Rehabili-
tation
by permit
holder

198. Where operations have not been carried on under a permit for more than two years or upon final cessation of operations, the permit holder shall rehabilitate the brine well and the salt solution mining cavern or the product storage well and the storage facility, as the case may be, in accordance with the regulations. *New.*

Report of
spills, leaks

199. Every permit holder shall report to the Minister all leaks, spills, contamination or other hazardous situations resulting from his operations under his permit. *New.*

Transfer

200. A permit may be transferred only with the written consent of the Minister. *New.*

PART XIV

TRANSITION

Prospector's
licence

201.—(1) Every prospector's licence issued under a predecessor of this Act that is in good standing on the day this Act comes into force shall be deemed to be a prospector's licence issued under this Act except that it expires at midnight on the 31st day of March, 1986.

Idem

(2) The expiry provision in subsection (1) does not apply to a prospector's licence that was issued as a lifetime licence.

Idem

(3) No holder of a prospector's licence suspended under a predecessor of this Act may apply for a prospector's licence under this Act until after the period of suspension.

Idem

(4) No person who was the holder of a prospector's licence that was suspended under a predecessor of this Act may apply

for a prospector's licence under this Act except with the consent of the Minister. *New.*

202. Unused tags issued under a predecessor of this Act may be exchanged before the 31st day of March, 1986 for tags issued under this Act and shall not be used after that date. *New.* Tags

203.—(1) For purposes of ascertaining assessment work credit requirements, every mining claim in good standing at the time this Act comes into force shall be considered to have been recorded as a mining claim at the time this Act comes into force. Assessment work credits

(2) In respect of every mining claim to which subsection (1) applies, the assessment work credits recorded for a claim shall be credited to that claim and where the recorded credits exceed the first year's requirements, the excess shall be credited against the requirements of subsequent years. Idem

(3) Assessment work credits that are expressed in man-days shall be credited, for purposes of subsection (2), at \$10 for each man-day credited. *New.* Idem

204.—(1) Every order of the Commissioner or a recorder made under a predecessor of this Act shall be deemed to be an order made by that person under this Act. Previous orders

(2) Where an order of the Commissioner made under a predecessor of this Act extends the time to apply and pay for a lease, the mining claim holder to whom the order applies may elect to apply and pay for the lease within one year after the day this Act comes into force or to continue to hold the claim by performing prescribed assessment work during that year. *New.* Idem

205. Every person to whom subsection 94 (1) of the *Mining Act*, being chapter 268 of the Revised Statutes of Ontario, 1980, applies on the day before this Act comes into force may apply for a lease under this Act within one year after this Act comes into force or he may maintain his mining claim under this Act by performing prescribed assessment work. *New.* Extending time to apply for lease

206. Where a lease issued under a predecessor of this Act contains a provision requiring the consent of the Minister to the transfer of the lease, that provision shall be deemed to be deleted. *New.* Old leases transferrable

Repeal

207.—(1) The *Mining Act*, being chapter 268 of the Revised Statutes of Ontario, 1980, is repealed.

Idem

(2) The *Beach Protection Act*, being chapter 39 of the Revised Statutes of Ontario, 1980, is repealed.

Commence-
ment

208. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

209. The short title of this Act is the *Mining Act, 1985*.

Bill 30

An Act to amend the Education Act

The Hon. S. Conway
Minister of Education



1st Reading July 4th, 1985
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTES

The Bill relates to the provision of secondary school education by separate school boards.

The Bill deals with:

1. Election by a separate school board to perform the duties of a secondary school board.
2. Entitlement to share in legislative grants.
3. Powers and duties in respect of secondary school grades.
4. Phasing in of secondary school grades.
5. Separate school electors on public boards.
6. Exemption of separate school electors from payment of rates for public secondary school purposes.
7. Estimates and rates for separate secondary school purposes.
8. Transfer of employment of teachers and other staff.
9. Entitlement to continue as a pupil in a public secondary school.
10. Entitlement to be a pupil in a secondary school.
11. Continuation and functions of the Planning and Implementation Commission.
12. Transfers of use or ownership of real and personal property between public boards and Roman Catholic school boards.

Bill 30

1985

An Act to amend the Education Act

Whereas section 93 of the *Constitution Act, 1867* embodies one of the essential conditions which facilitated the creation of a united Canada in 1867 by guaranteeing to Roman Catholics in Ontario certain rights and privileges with respect to denominational schools; and whereas the Roman Catholic separate schools have become a significant part of the school system in Ontario; and whereas it has been public policy in Ontario since 1899 to provide for public funds to support education in the Roman Catholic separate schools to the end of Grade 10; and whereas it is recognized that today a basic education requires a secondary as well as an elementary education; and whereas it is just and proper and in accordance with the spirit of the guarantees given in 1867 to bring the provisions of the law respecting Roman Catholic separate schools into harmony with the provisions of the law respecting public elementary and secondary schools, by providing legislative recognition of and funding for secondary education by Roman Catholic separate schools; and whereas the foregoing facts were affirmed by the Premier of Ontario in his statement to the Legislative Assembly on the 12th day of June, 1984;

Preamble

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 1 (1) of the *Education Act*, being chapter 129 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1981, chapter 47, section 17, 1982, chapter 20, section 2, 1982, chapter 32, section 1 and 1984, chapter 60, section 1, is further amended by adding thereto the following paragraphs:

35a. "Planning and Implementation Commission" means the Planning and Implementation Commission continued under section 136r;

.

42a. "public board" means a board of education or a secondary school board established under section 69;

.

46a. "Roman Catholic school board" means a separate school board that has made an election under section 136a or 136f that has been approved by the Minister;

.

59a. "separate school board" means a board that operates a separate school for Roman Catholics.

2. The said Act is amended by adding thereto the following sections:

Secondary School Education

Election re
secondary
school

136a.—(1) A separate school board may elect to perform the duties of a secondary school board for the area of jurisdiction of the board.

By-law

(2) An election under subsection (1) shall be by by-law approved by the Minister.

Approval

(3) The Minister may approve a by-law under subsection (2) upon receiving the advice of the Planning and Implementation Commission that the Commission is of the opinion that the first annual implementation plan formulated by the separate school board for the purpose of providing secondary school education and filed with the Commission will permit the separate school board to provide secondary school education and will promote the best interests of public education in Ontario.

Transmittal

(4) The secretary of a separate school board that makes an election under subsection (1) shall forthwith transmit to the Ministry a copy of the by-law certified by the secretary.

Notice

(5) Upon approval of a by-law by the Minister, the Ministry shall transmit notice of the approval to the board that passed the by-law and shall transmit a copy of the by-law and notice of approval,

(a) to the Planning and Implementation Commission;

- (b) to the secretary of every board of education that has jurisdiction in the same area as the separate school board;
- (c) to the clerk of every municipality all or part of which is within the area of jurisdiction of the separate school board; and
- (d) to the appropriate assessment commissioner.

136b.—(1) An election under section 136a is effective on the first day of the school year specified in the by-law approved by the Minister. Effective date

(2) A by-law approved by the Minister after the 30th day of June in a year shall not take effect before the school year that commences in the next following year. Election after 30th day of June

136c. A Roman Catholic school board has all the powers and shall perform all the duties that are conferred or imposed by this Act on a secondary school board in respect of the secondary school grades for which the Roman Catholic school board is entitled to share in the legislative grants. Powers and duties of Roman Catholic school board

136d. A Roman Catholic school board may enter into an agreement with a public board or another Roman Catholic school board to provide for the instruction of pupils of the Roman Catholic school board in the school or schools operated by the public board or the other Roman Catholic school board and for the payment in respect of such pupils of fees calculated in accordance with the regulations. Agreements for education at other schools

136e.—(1) A Roman Catholic school board is entitled to share in the legislative grants for secondary school purposes. Legislative grants

(2) The payment of legislative grants to a Roman Catholic school board is subject to the conditions prescribed by the regulations. Conditions

(3) The apportionment and distribution of legislative grants to a Roman Catholic school board is subject to the regulations. Apportionment and distribution

(4) The payment and apportionment of legislative grants to a Roman Catholic school board is subject to compliance by the Roman Catholic school board with sections 136a to 136y. Compliance

136f.—(1) Where, before the coming into force of this Act, the Planning and Implementation Commission has reported to the Minister upon the implementation plan of a Transitional

separate school board and has advised the Minister that the plan is appropriate for funding for the school year commencing in 1985, the separate school board is entitled to share in the legislative grants for secondary school purposes as of the first day of the school year commencing in 1985.

Conditions

(2) The entitlement under subsection (1) is subject to,

- (a) the separate school board electing by by-law to perform the duties of a secondary school board;
- (b) the approval of the Minister; and
- (c) subsections 136e (2) to (4).

By-law

(3) The separate school board shall forthwith after the coming into force of this Act pass the by-law and transmit to the Ministry a copy certified by the secretary of the board.

Application
of s. 136a
(3, 5)

(4) Subsections 136a (3) (approval) and (5) (notice) apply with necessary modifications in respect of an election under this section to perform the duties of a secondary school board.

Application
of
s. 136b (2)

(5) Subsection 136b (2) (election after 30th day of June) does not apply in respect of a by-law under this section.

Secondary
school grades

136g.—(1) For the first school year in respect of which an election is effective, the entitlement of a Roman Catholic school board under section 136e applies in respect of the secondary school grade or grades, not exceeding grades nine and ten, in which the board is providing instruction in the immediately preceding school year and in respect of the next higher grade.

Grades nine
and ten

(2) The entitlement of a Roman Catholic school board under section 136e applies in respect of grade nine or grade ten, or both, provided for the first time in the first school year in respect of which the election of the Roman Catholic school board is effective.

Additional
grades

(3) For each subsequent school year, the board's entitlement under section 136e applies in respect of the same secondary school grades as in the previous school year and in respect of the next higher grade until the entitlement applies in respect of all secondary school grades.

French
language
schools

136h.—(1) A Roman Catholic school board is entitled to share in the legislative grants as provided in section 136e in respect of a secondary school established and operated under

Part XI by a public board and transferred to and operated by the Roman Catholic school board.

(2) The entitlement under subsection (1) is in addition to the entitlement under section 136g (secondary school grades). Entitlement

136i.—(1) No member shall be elected by separate school electors to a public board that has the same or part of the same area of jurisdiction as a Roman Catholic school board. Membership on public board

(2) Subsection (1) applies in respect of the regular election under the *Municipal Elections Act* in the year 1988 and to elections held under that Act after the year 1988. Application
R.S.O. 1980,
c. 308

(3) A member of a public board mentioned in subsection (1) elected by separate school electors ceases to be eligible to be a member of the public board at the end of the first calendar year in which the Roman Catholic school board performs the duties of a secondary school board in accordance with an election under section 136a. Elected member

136j.—(1) Every separate school supporter paying rates on property in the area of jurisdiction of a Roman Catholic school board is exempt from the payment of all rates imposed for secondary school purposes of a public board to the same extent that the person is exempt from payment of rates imposed for public elementary school purposes. Payment of public secondary school rates

(2) The exemption under subsection (1) commences in respect of the year following the year in which the election of the Roman Catholic school board becomes effective under section 136b. Application of subs. (1)

(3) Subsections (1) and (2) apply on and after the 1st day of January in the year next following the year in which this section comes into force. Application

136k.—(1) The provisions of this Part that apply to the preparation and adoption of estimates and the levying and collection of rates or taxes for separate school purposes apply with necessary modifications for secondary school purposes in respect of a Roman Catholic school board. Estimates and rates for separate secondary school purposes

(2) Every Roman Catholic school board shall continue to prepare and adopt the estimates required of it for elementary school purposes and must prepare and adopt estimates for secondary school purposes in the same manner as is required of a public board. Elementary and secondary estimates

Application (3) Subsections (1) and (2) apply on and after the 1st day of January in the year next following the year in which this section comes into force.

Teaching and other staffs

1361.—(1) A public board that operates a school in an area that is also the area or part of the area of jurisdiction of a Roman Catholic school board shall designate, in accordance with the guidelines issued by the Planning and Implementation Commission, the persons on its supervisory officers staff, teaching staff and other staffs whose services will not be required by the public board consequent upon the election of the Roman Catholic school board to perform the duties of a secondary school board.

Yearly designations

(2) The public board shall make the designations in each of the first ten school years during which the Roman Catholic school board elects to perform the duties of a secondary school board but not later than the date for each year fixed by the Planning and Implementation Commission.

Positions on staff of Roman Catholic school board

(3) The Roman Catholic school board shall fill positions,

- (a) on its teaching staff, by offering employment to designated persons employed by the public board whose qualifications recorded by the Ministry meet the qualifications required for the positions; and
- (b) on its supervisory officers staff and other staffs, by offering employment to designated persons employed by the public board in substantially similar positions.

Hiring other persons

(4) The Roman Catholic school board may hire another person to fill a position,

- (a) on its supervisory officers staff or teaching staff, only if no designated person employed by the public board whose qualifications recorded by the Ministry meet the qualifications required for the position accepts the offer of employment or if there is no such designated person; or
- (b) on its other staffs, only if no designated person in a substantially similar position accepts the offer of employment or if there is no such designated person.

Application of subss. (3, 4)

(5) Subsections (3) and (4) apply in respect of the first ten school years in respect of which the Roman Catholic school

board elects to perform the duties of a secondary school board.

(6) Each public board that designates persons under this section shall transmit to the Planning and Implementation Commission in each year but not later than the date for each year fixed by the Commission, a list of the names and positions of designated persons employed by the public board who have not been employed by a Roman Catholic school board.

Transmittal
of lists

(7) The Commission shall transmit the lists of names of designated persons and positions to all boards each year that it receives the lists.

Idem

(8) The public board shall not terminate the employment of a person designated under subsection (1) solely for the reason set out in that subsection until such time as the person is employed by the Roman Catholic school board.

Employment
by public
board

(9) Subsection (8) does not apply in respect of a designated person,

Application
of subs. (8)

- (a) on the teaching staff of the public board, who refuses an offer of employment by the Roman Catholic school board in a position for which the designated person's qualifications recorded by the Ministry are required; or
- (b) on the supervisory officers staff or other staff of the public board, who refuses an offer of employment by the Roman Catholic school board in a position substantially similar to the position in which the person is employed by the public board on the date of designation.

(10) A designated person employed by the Roman Catholic school board has the right to an annual rate of salary of not less than the annual rate of salary that would have applied to the person if the person had continued in the employ of the public board in the first year that the person is employed by the Roman Catholic school board.

Salary
right

(11) A designated person employed by the Roman Catholic school board has the right to commence the employment with seniority and with probationary or permanent status with the Roman Catholic school board equal to the seniority and the probationary or permanent status the designated person would have had if the designated person had continued to be employed by the public board.

Seniority
and employ-
ment status

- Transfer of sick leave credits (12) A designated person employed by a Roman Catholic school board is entitled to transfer to the plan maintained by that board sick leave credits standing to the person's credit with the public board that designated the person.
- Limitation (13) The amount of credits transferred shall not exceed the cumulative amount of sick leave credits permitted under the plan maintained by the Roman Catholic school board.
- Account for remainder (14) The balance of the person's sick leave credits shall be placed to the credit of the person in an account that shall be maintained by the public board.
- Use of remainder (15) The designated person may use the sick leave credits in the account while employed by the Roman Catholic school board by written designation which shall be transmitted by the Roman Catholic school board to the public board but the Roman Catholic school board shall pay the salary represented by the credits that are used, and the number of credits in the account shall be reduced by the number of credits used.
- Payment on retirement (16) Upon retirement from employment, the person is entitled to payment by the public board for such credits at the rate of one day's wages for each remaining credit at the rate received by the person immediately before retirement, but the person is not entitled to more than an amount equal to the person's wages for one-half the number of days remaining to the person's credit in the account and the person is not entitled to an amount equal to more than one-half year's earnings after including the amount to which the person is entitled under the sick leave plan maintained by the Roman Catholic school board.
- Application of subss. (12-16) (17) Subsections (12) to (16) apply only where the Roman Catholic school board has the same or part of the same area of jurisdiction as the public board.
- Exception (18) Subsections (12) to (17) do not apply where the public board and the Roman Catholic school board have entered into an agreement that provides for the payment for or transfer of the excess sick leave credits mentioned in those subsections.
- Discrimination (19) The Roman Catholic school board shall not discriminate on the basis of creed with respect to employment against any person designated by the public board.
- Application of subss. (19) (20) Subsection (19) applies in respect of employment to fill a position and in respect of employment and advancement in employment while in a position.

(21) Subsections (1) to (20) apply despite section 23 of the *Human Rights Code, 1981*. Application of 1981, c. 53

136m.—(1) A dispute in respect of the designation of or the failure to designate a person on the teaching or other staffs of a public board or in respect of the employment of a person designated by a public board may be resolved by a grievance arbitration in accordance with this section. Staff dispute resolution

(2) Either party to the dispute may notify the other party in writing of intention to submit the dispute to arbitration. Notice to arbitrate

(3) The notice shall contain the name of the first party's appointee to an arbitration board. Name of appointee

(4) The second party shall, within five days after receiving the notice, notify the first party either that the second party accepts the appointee as a single arbitrator or notify the first party of the name of the second party's appointee to the arbitration board. Response

(5) The two appointees shall, within five days after the appointment of the second of them, appoint a third person who shall be the chairman of the arbitration board. Chairman

(6) If the second party fails to give notice accepting a single arbitrator or appointing a second arbitrator, or if the two appointees fail to appoint a chairman, the appointment shall be made by the Education Relations Commission upon the request of either party to the dispute. Failure to act

(7) The single arbitrator or the arbitration board, as the case may be, shall hear the parties and issue a decision. Hearing

(8) The decision of a majority is the decision of the arbitration board, but if there is no majority, the decision of the chairman is the decision of the arbitration board. Majority

(9) The decision is final and binding upon the parties to the dispute. Decision is final

(10) A party to an arbitration proceeding shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing. Examination of documentary evidence

(11) A single arbitrator or a member of an arbitration board shall not have taken part before the hearing in an investigation or consideration of the subject-matter of the hearing. Prior knowledge

Notice of
communi-
cation

(12) A single arbitrator or a member of an arbitration board shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or party or the representative of a party except upon notice to and opportunity for all parties to participate.

Participation
in decision

(13) No member of an arbitration board shall participate in a decision of the board unless the member was present throughout the hearing and heard the evidence and argument of the parties and, except with the consent of the parties, a decision of the board shall not be given unless all members so present participate in the decision.

Release of
documentary
evidence

(14) Documents and things put in evidence at an arbitration hearing shall, upon the request of the person who produced them, be released to the person by the board within a reasonable time after the matter in issue has been finally determined.

Collective
agreement

(15) If there is a collective agreement between the parties to the dispute and the collective agreement does not provide for arbitration of such a dispute, the collective agreement shall be deemed to include subsections (1) to (14).

Pupils in
public
secondary
schools

136n.—(1) A pupil in a public secondary school is entitled to continue to be a pupil in the public secondary school despite the fact that the pupil or the parent or other person who has lawful custody of the pupil becomes exempt from payment of rates imposed for public secondary school purposes by reason of an election made under section 136a by a Roman Catholic school board.

Fees

(2) The Roman Catholic school board shall pay to the board that operates the public secondary school the fees calculated in accordance with the regulations to which the board is entitled for providing secondary school education to the pupil.

Right of
pupil
to attend
separate
secondary
school

136o.—(1) A person who is qualified to be a pupil in a secondary school operated by a public board is entitled to be a pupil in a secondary school operated by a Roman Catholic school board if,

- (a) the public secondary school is in the area of jurisdiction of the Roman Catholic school board; and
- (b) the director of education or, if there is no director of education, the appropriate supervisory officer of the Roman Catholic school board certifies that there is accommodation available for the person in

the secondary school operated by the Roman Catholic school board.

(2) A person who is qualified to be a pupil in a secondary school operated by a Roman Catholic school board is entitled to be a pupil in a secondary school operated by a public board if, Idem

- (a) the Roman Catholic secondary school is in the area of jurisdiction of the public board; and
- (b) the director of education or, if there is no director of education, the appropriate supervisory officer of the public board certifies that there is accommodation available for the person in the secondary school operated by the public board.

(3) The public board shall pay the fee to which the Roman Catholic school board is entitled for providing secondary school education under subsection (1), and the Roman Catholic school board shall pay the fee to which the public board is entitled for providing secondary school education under subsection (2). Fee

(4) The fee to which a board is entitled under this section is the lesser of the fee set by the board or the fee calculated in accordance with the regulations. Amount

(5) When the director of education or the appropriate supervisory officer, as the case requires, is of the opinion that accommodation is not available for the person in the secondary school, the director or supervisory officer shall give written notice thereof to the person or, if the person is a minor, to the parent or other person who has lawful custody of the person. Notice re accommodation

(6) Upon written application, together with written reasons supporting the application, a Roman Catholic school board shall exempt a pupil who is not a Roman Catholic from programs and courses of study in religious education if, Exemption from religious studies

- (a) the pupil is enrolled in a program that is not otherwise available to the pupil in a secondary school operated by a public board within the area of jurisdiction of the Roman Catholic school board; or
- (b) it is impractical by reason of distance or terrain or by reason of physical handicap, mental handicap or multi-handicap for the pupil to attend a secondary school operated by a public board.

- Idem (7) A Roman Catholic school board may exempt from programs and courses of study in religious education any other pupil who is not a Roman Catholic.
- Notice re exemption (8) Where a Roman Catholic school board refuses a request for an exemption under subsection (6), the director of education or, if there is no director of education, the appropriate supervisory officer of the board shall give written notice of the refusal, together with written reasons, to the pupil or, if the pupil is a minor, to the parent or other person who has lawful custody of the pupil.
- Notice requiring hearing (9) The person requesting admission under subsection (1) or (2) or the pupil requesting an exemption, or the parent or other person who has lawful custody of the person or pupil may, by written notice served upon the director or supervisory officer and upon the Planning and Implementation Commission within fifteen days after service of the notice of the director or supervisory officer, require a hearing by the Planning and Implementation Commission.
- Hearing (10) The Planning and Implementation Commission shall appoint a time and place for a hearing and shall give notice thereof to the parties.
- Parties (11) The parties to the hearing are the director of education or the supervisory officer, as the case requires, and the pupil or other person who required the hearing.
- Decision (12) The Planning and Implementation Commission shall hear and decide the matter in issue and shall transmit a copy of its decision to each of the parties to the hearing.
- Admission (13) Where the decision of the Planning and Implementation Commission is that the person is entitled to be admitted as a pupil under subsection (1) or (2), the Roman Catholic school board or the public board, as the case requires, shall admit the person as a pupil in the secondary school.
- Exemption (14) Where the decision of the Planning and Implementation Commission is that the Roman Catholic school board is required to exempt the pupil under subsection (6) from programs and courses of study in religious education, the Roman Catholic school board shall grant the exemption to the pupil.
- Application of 1981, c. 53 (15) Subsections (1) to (14) apply despite section 18 of the *Human Rights Code, 1981*.

136p. Other provisions of this Act shall be construed with necessary modifications in order to give effect to and be consistent with sections 136a to 136y. Interpretation

136q. A right or duty under sections 136a to 136y may be enforced by order of the Divisional Court upon application to the court. Enforcement

Planning and Implementation Commission

136r.—(1) The Planning and Implementation Commission established under clause 9 (a) is continued and shall be composed of not more than eight members appointed by the Lieutenant Governor in Council. Commission continued

(2) The Lieutenant Governor in Council shall designate a chairman and a vice-chairman from among the members of the Commission. Chairman and vice-chairman

(3) The members of the Commission shall be appointed for such terms as may be determined by the Lieutenant Governor in Council and may be reappointed for further terms. Term of office

(4) If the chairman is absent or unable to act or if there is a vacancy in the office of chairman, the vice-chairman shall act as and have all the powers of the chairman. Authority of vice-chairman

(5) The members of the Commission shall be paid such remuneration and expenses as are determined by the Lieutenant Governor in Council. Remuneration and expenses

(6) A majority of the members of the Commission, including the chairman or vice-chairman, constitutes a quorum. Quorum

(7) Three members of the Commission constitute a quorum for the purposes of a proceeding before the Commission in respect of accommodation in a secondary school operated by a Roman Catholic school board or in respect of exemption from programs and courses of study in religious education, and decisions in such proceedings require the vote of a majority of the members of the Commission present at the hearing in the proceeding. Quorum for specific proceedings

(8) The Commission may sit in panels and the panels may sit at the same time for the purposes of such proceedings. Panels

(9) The chairman shall assign the members of the Commission to its panels and may change an assignment at any time. Assignment

Staff and
accommo-
dation

(10) The Ministry shall provide the Commission with such staff and accommodation as the Minister considers necessary for the purposes of the Commission.

Advice to
Minister

136s.—(1) The Planning and Implementation Commission shall advise the Minister in respect of specific means by which the extension of the Roman Catholic school system to include secondary school education may best be carried out.

Reports

(2) The Commission may report to the Minister at any time and shall report to the Minister in such form and manner, with such information and at such times as the Minister requires.

Consultation

(3) For the purpose of preparing its advice and reports to the Minister, the Commission shall consult with organizations that have a direct interest in the subject-matter of the particular advice and report, organizations and persons that the Commission considers it appropriate to consult and organizations and persons specified by the Minister.

Matters
to be
considered by
Commission

(4) For the purpose of preparing its advice and reports to the Minister, the Commission shall establish criteria in respect of and, in accordance with the criteria, shall evaluate,

- (a) plans formulated by Roman Catholic school boards to provide secondary school education;
- (b) plans formulated by public boards in relation to the extension of the Roman Catholic school system to include secondary school education;
- (c) plans for new or altered areas of jurisdiction of Roman Catholic school boards in relation to separate secondary schools;
- (d) the effect on the employment of supervisory officers, teachers and other persons employed in secondary schools consequent upon the extension of the Roman Catholic school system and the plans formulated by Roman Catholic school boards and public boards in relation to the employment of such persons; and
- (e) any other subject specified by the Minister.

Guidelines

(5) The Commission shall prepare and issue guidelines that shall govern the designation by public boards of persons on supervisory officers staffs, teaching staffs and other staffs whose services will not be required by the public boards con-

sequent upon the election of Roman Catholic school boards to perform the duties of secondary school boards.

(6) A guideline issued by the Commission is not a regulation within the meaning of the *Regulations Act*.

Application
of R.S.O.
1980,
c. 446

136t.—(1) The Planning and Implementation Commission may require a Roman Catholic school board to formulate and file with the Commission each year an implementation plan setting out details of education programs, facilities, and supervisory officers, teaching staff and other staff required by the board for the purpose of providing the secondary school education until the Roman Catholic school board has filed implementation plans in respect of all secondary school grades.

Implemen-
tation
plans

(2) The Commission may require a public board that is affected or that is likely to be affected by the provision of secondary school education by a Roman Catholic school board to formulate and file with the Commission a plan setting out details of changes in education programs, facilities and supervisory officers, teaching staff and other staff that will be or that are likely to be necessary in response to the provision of secondary school education by the Roman Catholic school board.

Public
board

(3) The Commission may specify the format to be used in plans to be filed by Roman Catholic school boards and public boards and may specify time limits for the filing of plans requested by the Commission.

Format

(4) Every Roman Catholic school board and every public board shall comply with a request by the Commission for the formulation and filing of a plan under subsections (1) to (3).

Compliance

136u.—(1) For the purpose of ensuring that it receives adequate information, the Planning and Implementation Commission may hold public meetings in respect of the provision of secondary school education by individual Roman Catholic school boards.

Public
meetings

(2) Where the Commission decides to hold a meeting mentioned in subsection (1), the Commission shall give notice of the meeting to the organizations it is required to consult, to such other persons or organizations as the Commission specifies and shall give public notice of the meeting.

Notice

136v.—(1) Where the Planning and Implementation Commission is of the opinion that the implementation plans of a Roman Catholic school board and a public board do not together provide a method that meets the criteria set out in

Negotiations

subsection (2), the Commission shall so notify the boards and shall specify for the boards the matters that must be resolved in order to meet the criteria.

Criteria (2) The criteria are that the method must permit the Roman Catholic school board to provide secondary school education and that the method must promote the best interests of public education in Ontario.

Good faith (3) Upon receipt of the notice, the boards shall negotiate in good faith in respect of the matters specified by the Commission in order to meet the criteria set out in subsection (2).

Assistance by Commission **136w.**—(1) A public board or a Roman Catholic school board, or the Minister, may request the Planning and Implementation Commission to arrange or assist in, or both, negotiations between the two boards respecting the transfer of the use or ownership of real or personal property and the transfer of persons on the teaching and other staffs for secondary school purposes.

Mediation (2) Where the Commission is requested to arrange or assist in, or both, negotiations, the Commission shall inform the Minister and the parties to the negotiations of the request and the Commission shall confer with and mediate between the parties in order to bring about an agreement between the parties and shall report to the parties and to the Minister on the progress of the negotiations.

Fact finding (3) Where the Commission is requested to act as a fact finder, the Commission shall inform the Minister and the parties of the request and the Commission shall confer with the parties, inquire into the subject-matter of the negotiations and into any other matter that the Commission considers relevant to the subject-matter and shall report to the parties and to the Minister the findings of the Commission.

Procedures (4) The Commission may establish its own procedures when assisting in negotiations or acting as a fact finder but the Minister may establish guidelines that shall govern such procedures.

Staff of Commission (5) The duties of the Commission under subsections (1) to (4) shall be performed by the staff of the Commission.

Duty of parties (6) The parties to negotiations shall co-operate with the Commission and shall provide such information as is requested by the Commission when the Commission is assisting in negotiations or acting as a fact finder.

136x.—(1) A dispute in respect of a matter that may be negotiated between a public board and a Roman Catholic school board may be resolved by an order of the Planning and Implementation Commission upon application by either of the boards.

Resolution of
dispute
between
boards

(2) Upon receipt of an application, the Commission shall appoint a tribunal composed of not more than three persons who shall hold a hearing in respect of and decide upon the subject-matter of the dispute.

Hearing

(3) The tribunal shall appoint a time and place for a hearing and shall give notice thereof to the parties.

Notice

(4) The parties to the hearing are the public board and the Roman Catholic school board.

Parties

(5) No person is eligible to be a member of a tribunal who is or has been a member of a board that is a party to the dispute or who is acting or has, within a period of six months preceding the date of appointment of the hearing officer, acted as solicitor, counsel or agent of either of the parties.

Eligibility

(6) In deciding the matter, the tribunal shall endeavour to permit the Roman Catholic school board to provide secondary education and to promote the best interests of public education in Ontario.

Criteria

(7) The tribunal shall include with the report the record of the proceeding.

Record

(8) The tribunal, in its decision, may provide for,

Decision

- (a) the transfer of the use of real property or personal property, or both, from the public board to the Roman Catholic school board;
- (b) the transfer of the ownership of real property or personal property, or both, from the public board to the Roman Catholic school board;
- (c) procedures that shall be followed in the reduction of the number of supervisory officers, the reduction of teaching staff and the reduction of other staffs by the public board and in the employment of supervisory officers, teachers and other staff by the Roman Catholic school board,

or any combination of them.

Order

(9) The tribunal shall transmit its decision in writing, together with written reasons and the record of the proceeding to the Commission, and the Commission shall issue and transmit to the parties an order in the terms of the decision.

Retransfer

(10) Real property ordered transferred under this section is not subject to expropriation by the public board, but upon application, the Minister, with the approval of the Lieutenant Governor in Council, may order the retransfer, subject to the conditions specified in the order, to the public board of the use or ownership of real property or personal property, or both, that was transferred in accordance with an order of the Commission.

Application
of
R.S.O. 1980,
c. 148

(11) The *Expropriations Act* does not apply in respect of the transfer or retransfer of real property or personal property in accordance with an order under this section.

Enforcement
of order

(12) The Commission or Minister, as the case requires, shall cause a copy of an order made under this section to be filed in the office of the Registrar of the Supreme Court, exclusive of the reasons therefor, and the order shall be entered in the same way as a judgment of the Supreme Court and is enforceable as such.

L.G. in C.
may confirm,
vary or
rescind
decision
or order

(13) Upon the petition of any party to a proceeding under this section, filed with the Clerk of the Executive Council within twenty-eight days after the date of the decision or order of the Commission, the Lieutenant Governor in Council may,

- (a) confirm, vary or rescind the whole or any part of the decision or order; or
- (b) require the Commission to appoint a new tribunal to hold a new hearing of the whole or any part of the matter upon which the decision or order of the Commission was based.

No further
petition

(14) The decision and order of the Commission after a new hearing ordered by the Lieutenant Governor in Council are not subject to petition under this section.

Filing of
documents
on petition

(15) Upon the filing of a petition, the Commission shall transmit to the Clerk of the Executive Council the report and recommendations of the tribunal, the record of the proceeding and a copy of the decision and order of the Commission.

(16) The Lieutenant Governor in Council is not required to hold or to afford to any person an opportunity for a hearing before deciding upon a petition under this section. Hearing by
L.G. in C.

136y. The resolution of a matter between a public board and a Roman Catholic school board under sections 136a to 136x, except as specifically provided for in those sections, is a nullity if the result is inconsistent with any other Act, any other provision of this Act or a regulation under any Act. Conflict

COMPLEMENTARY AMENDMENTS

3.—(1) Section 126 of the said Act, as re-enacted by the Statutes of Ontario, 1981, chapter 47, section 21 and amended by 1984, chapter 60, section 8, is further amended by adding thereto the following subsection:

(9) The assessment of a corporation for separate school purposes under subsections (1) to (8) in respect of a Roman Catholic school board applies in the same manner in relation to secondary school purposes as to elementary school purposes. Secondary
school
purposes

(2) Section 259 of the said Act is amended by adding thereto the following subsections:

(2) A French-language advisory committee established by a Roman Catholic school board before or after the board makes an election under section 136a has the same duties in respect of the French-language schools or classes in the secondary schools operated by the board as the committee has in respect of the elementary schools operated by the board. Secondary
school

(3) Subsection (1) applies with necessary modifications in respect of an English-language advisory committee established by a Roman Catholic school board. Idem

(3) The said Act is further amended by adding thereto the following sections:

277t.—(1) A person who is a separate school elector in respect of a separate school board that has elected to perform the duties of a secondary school board is not eligible for election to a board of education that has the same or part of the same area of jurisdiction as the separate school board. Membership
on public
board

(2) Subsection (1) applies in respect of the regular election under the *Municipal Elections Act* in the year 1988 and to elections held under that Act after the year 1988. Application
R.S.O. 1980,
c. 308

Elected
member

(3) Subsection (1) does not disqualify a person from completing a term of office to which the person is elected as an additional member before the separate school board elects to perform the duties of a secondary school board.

Transfer
of Part XI
secondary
school

277u.—(1) Where a secondary school operated under Part XI is transferred to a separate school board and additional members are no longer required on the board from which the school is transferred, the additional members of the board of education from which the secondary school is transferred cease to be members of the board and become members of the French-language advisory committee of the board of education until the next regular election.

Additional
members of
separate
school board

(2) The separate school board shall appoint to the separate school board such number of additional members as the Minister specifies, and the additional members shall hold office until the next regular election.

Application
of 1977,
c. 5, s. 5

4. Section 5 of *The Essex County French-language Secondary School Act, 1977*, being chapter 5, shall not be construed to prevent the conveyance of the School mentioned in the said Act to a Roman Catholic school board.

Repeal

5. Sections 136r to 136x of the *Education Act*, as enacted by section 2 of this Act, are repealed on the 1st day of July, 1995.

Commence-
ment

6. This Act comes into force on the day it receives Royal Assent.

Short title

7. The short title of this Act is the *Education Amendment Act, 1985*.

Bill 31

An Act to amend the Homes for the Aged and Rest Homes Act

Mr. Warner



1st Reading July 2nd, 1985
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTE

The purpose of this Bill is to prevent the discharge of a resident from a rest home or a home for the aged without the approval of a physician independent of the home and without ensuring that there are suitable alternative accommodations for the resident. The amendment is similar to the requirements for discharge from a nursing home under the regulations to the *Nursing Homes Act*.

Bill 31

1985

**An Act to amend the
Homes for the Aged and Rest Homes Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 19 of the *Homes for the Aged and Rest Homes Act*, being chapter 203 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

19.—(1) Except as provided in subsection (3), no resident shall be discharged from a home or joint home unless, Discharge of residents from homes

- (a) a discharge order by a physician other than the physician of the home or joint home has been recorded on the medical record;
- (b) arrangements have been made to provide services and accommodation suitable to meet the needs of the resident being discharged; and
- (c) the resident and the resident's next-of-kin or legal representative, as the case may be, have been notified of the proposed discharge twenty-four hours prior to the discharge of the resident from the nursing home.

(2) When a resident of a home or joint home is to be admitted to a hospital and circumstances do not permit the twenty-four hours notice required under clause (1) (c), the next-of-kin or legal representative shall be notified as soon as possible of the proposed discharge of the resident. Exception

(3) A resident who wishes to terminate arrangements for care with a home or joint home may be discharged only after the resident, or where he or she lacks the mental capacity, the resident's legal representative has signed a statement declaring that the resident wishes to leave the nursing home and the res- Consent

ident's next-of-kin or legal representative, as the case may be, has been notified twenty-four hours prior to the discharge.

Commence-
ment

2. This Act comes into force on the day it receives Royal Assent.

Short title

3. The short title of this Act is the *Homes for the Aged and Rest Homes Amendment Act, 1985*.

Bill 32

An Act to amend the Workers' Compensation Act

The Hon. W. Wrye
Minister of Labour



1st Reading July 5th, 1985
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTES

SECTION 1. Under the proposed subsection 36 (16) of the Act, periodic payments for the survivors of deceased workers are increased, subject to the ceiling set out in the subsection, by 5 per cent where the death occurred after the 31st day of March, 1985 and before the 1st day of July, 1985.

SECTION 2. Effective the 1st day of July, 1985, the minimum amounts payable for permanent total disability and to survivors of a deceased worker will be increased by 5 per cent from \$10,500 to \$11,025 where the injury or death occurred after the 1st day of April, 1985.

SECTION 3. Under the proposed subsection 45 (13) of the Act, payments for permanent total disability are increased, subject to the ceiling set out in the subsection, by 5 per cent where the injury occurred after the 31st day of March, 1985, and before the 1st day of July, 1985.

SECTION 4. The allowance for the repair and replacement of clothing worn or damaged by a lower limb prosthesis, back brace or permanent leg brace is increased from \$350 to \$368 and by an upper limb prosthesis from \$175 to \$184.

SECTION 5. Upon the coming into force of section 133 of the Act on the 1st day of April, 1985, workers who were receiving temporary total disability benefits received an increase of up to 5 per cent if their average earnings were less than \$26,800. The proposed amendments provide for an increase, effective the 1st day of July, 1985, of up to 5 per cent for workers who received no increase because their average earnings were over \$26,800 or who received less than 5 per cent because the full increase would have exceeded the maximum established by sections 39 or 45, as continued by section 132.

SECTION 6. Subsection 36 (1) of the Act, as continued by section 132, sets out a scale of compensation to be paid where an injured worker died before the 1st day of April, 1985. The proposed amendment increases the amounts payable under subsection 36 (1) as follows:

1. Payments to a dependent widow or widower are increased from \$593 per month to \$641 effective the 1st day of July, 1985.
2. Where the dependent widow or widower has one or more children, the additional monthly payment for each child under the age of sixteen years is increased from \$165 per month to \$179 effective the 1st day of July, 1985. The amount payable to a child upon the death of the widow or widower is increased by the amounts set out in paragraph 3.
3. The payment for dependent children under the age of sixteen years is increased where there are no other dependants from \$185 per month to \$200 effective the 1st day of July, 1985.

SECTION 7. The amount payable for permanent disability under section 43 of the Act, as continued by section 132, is increased by 5 per cent.

SECTION 8. Under the proposed section 136a, the minimum amount of compensation payable for temporary total disability is increased from \$188 per week to \$198 per week effective the 1st day of July, 1985, where the average earnings of the worker were not less than \$198. The minimum amount payable for permanent total disability is increased from \$826 per month to \$868 from the 1st day of July, 1985.

SECTION 9. The proposed amendment provides that section 52 of the Act, as amended by section 4 of the Bill, will apply where an injury occurred before the 1st day of April, 1985.

SECTION 10. Self-explanatory.

Bill 32

1985

**An Act to amend the
Workers' Compensation Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Section 36 of the *Workers' Compensation Act*, being chapter 539 of the Revised Statutes of Ontario, 1980, as re-enacted by the Statutes of Ontario, 1984, chapter 58, section 9, is amended by adding thereto the following subsection:

(16) The amounts payable under this section as periodic payments shall be increased if the worker's death occurred on or before the 30th day of June, 1985 by adding thereto a factor of 5 per cent effective the 1st day of July, 1985, but the total periodic payments after the application of this subsection shall not exceed 90 per cent of the net average earnings of the deceased worker at the time of injury, calculated as if the worker's average earnings were \$31,500 per annum. Adjustment

(2) Subsection 36 (16) of the said Act, as enacted by subsection (1) of this section, does not apply where payments will be increased under subsection 42 (4), (5) or (6), as amended by section 2 of this Act.

2. Subsections 42 (3), (4), (5) and (6) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 58, section 11, are amended by striking out "\$10,500" wherever that amount appears and inserting in lieu thereof in each instance "\$11,025".

3.—(1) Section 45 of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 58, section 11, is amended by adding thereto the following subsection:

(13) The amounts payable under this section shall be increased if the worker's injury occurred on or before the 30th day of June, 1985 by adding thereto a factor of 5 per cent effective the 1st day of July, 1985, but the total payments after Adjustment

the application of this subsection shall not exceed 90 per cent of the net average earnings of the worker, calculated as if the worker's average earnings were \$31,500 per annum.

(2) Subsection 45 (13) of the said Act, as enacted by subsection (1) of this section, does not apply where payments will be increased under subsection 42 (3), as amended by section 2 of this Act.

4. Clause 52 (3) (b) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 38, section 6, is repealed and the following substituted therefor:

- (b) on application, an allowance not exceeding \$368 a year for the replacement or repair of clothing worn or damaged by reason of the wearing of a lower limb prosthesis or a back brace for a permanent back disability or a permanent leg brace, and not exceeding \$184 a year in respect of an upper limb prosthesis where the lower or upper limb prosthesis, back brace or permanent leg brace is supplied by the Board.

5. Section 133 of the said Act, as enacted by the Statutes of Ontario, 1984, chapter 58, section 37, is amended by adding thereto the following subsections:

Idem

(4) Where a worker who was in receipt of temporary disability benefits on the 1st day of April, 1985, and who was in receipt of such benefits on the 1st day of July, 1985 received an increase in benefits under subsection (3) that was less than 5 per cent, the Board shall adjust the rate of compensation by adding thereto an additional amount effective the 1st day of July, 1985, such that the increase in the rate under this subsection when combined with the increase under subsection (3) is equal to 5 per cent, but the compensation rate resulting from the adjustment shall not exceed the maximum established by sections 39 and 45, as continued by section 132, as if the maximum average earnings set out in the said section 45 were \$28,200 per annum.

Idem

(5) Where a worker was in receipt of temporary disability benefits on the 1st day of July, 1985, and the average earnings of the worker computed under section 45, as continued by section 132, were equal to or greater than \$26,800 per annum, the Board shall adjust the rate of compensation effective the 1st day of July, 1985, by adding thereto an additional 5 per cent, but the compensation rate resulting from the adjustment shall not exceed the maximum established by sections 39 and 45, as continued by section 132, as if the maximum average

earnings set out in the said section 45 were \$28,200 per annum.

(6) Subsection (5) does not apply to a worker who receives an adjustment under subsection (4). Non-application

6. The said Act is amended by adding thereto the following section:

133a. Clauses 36 (1) (c), (d), (e) and (f) of this Act, as continued by section 132, are repealed and the following substituted therefor: s. 36 (1) (c-f)
re-enacted

- (c) where the widow or widower is the sole dependant, a monthly payment of \$641, effective the 1st day of July, 1985;
- (d) where the dependants are a widow or widower and one or more children, a monthly payment of \$641 with an additional monthly payment of \$179 to be increased upon the death of the widow or widower to \$200 for each child under the age of sixteen years, effective the 1st day of July, 1985;
- (e) where the dependants are children, for each child under the age of sixteen years, a monthly payment of \$200, effective the 1st day of July, 1985;
- (f) where there are dependants other than those mentioned in clauses (c), (d) and (e), and there are no dependants who are persons referred to in the said clauses, a sum reasonable and proportionate to the pecuniary loss to such first-mentioned dependants occasioned by the death, to be determined by the Board, but not exceeding, in the whole, \$641 a month effective the 1st day of July, 1985.

7. Section 136 of the said Act, as enacted by the Statutes of Ontario, 1984, chapter 58, section 37, is amended by adding thereto the following subsection:

(2) Subsections 43 (8), (9) and (10) of this Act, as continued by section 132, are repealed and the following substituted therefor: s. 43 (8-10)
re-enacted

(8) The amounts payable under this section shall be increased if the injury occurred on or before the 31st day of March, 1985 by adding thereto a factor of 5 per cent effective the 1st day of July, 1985. Increase
in payments

Limitation
under this
section

(9) The amount of compensation to which a worker is entitled shall not exceed the like proportion of 75 per cent of the rate of average earnings of \$28,200.

Non-
application

(10) Subsections (8) and (9) do not apply to an award under clause 44 (b).

8. The said Act is further amended by adding thereto the following section:

s. 44
re-enacted

136a. Section 44 of this Act, as continued by section 132, is repealed and the following substituted therefor:

Minimum
amount of
compensation

44. Notwithstanding anything to the contrary in this Part, the amount of compensation to which an injured worker is entitled shall not be less than,

(a) for temporary total disability,

(i) \$198 a week, where the worker's average earnings were not less than \$198 a week, from the 1st day of July, 1985, and

(ii) the amount of the worker's earnings, where the worker's average earnings are less than \$198 a week, from the 1st day of July, 1985,

and for temporary partial disability, a proportionate amount in accordance with the impairment of earning capacity; and

(b) for permanent disability, the pension computed in accordance with sections 43 and 45, but the amount of such pension shall not be less than,

(i) for permanent total disability, \$868 a month from the 1st day of July, 1985, and

(ii) for permanent partial disability, an amount proportionate to that mentioned in subclause (i) in accordance with the impairment of earning capacity; or

(c) alternatively to subclause (b) (i), for permanent total disability, the benefits which would have been payable from time to time under clauses 36 (1) (c), (d) and (e) and under section 38, as if the worker had died from the injury.

9. Section 137 of the said Act, as enacted by the Statutes of Ontario, 1984, chapter 58, section 37, is amended by adding thereto the following subsection:

(2a) Section 52 of this Act, as amended by section 4 of the *Workers' Compensation Amendment Act, 1985*, being chapter ---, applies to this Act, as continued by section 132. Idem

10. Increases in amounts payable under the said Act, as a result of the enactment of this Act, apply to payments accruing on or after the 1st day of July, 1985, and nothing in this Act entitles any person to claim additional compensation for any period before the 1st day of July, 1985 or with respect to any award commuted or paid as a lump sum before that day. Transition

11. This Act shall be deemed to have come into force on the 1st day of July, 1985. Commence-
ment

12. The short title of this Act is the *Workers' Compensation Amendment Act, 1985*. Short Title

Bill 32

*(Chapter 3
Statutes of Ontario, 1985)*

An Act to amend the Workers' Compensation Act

The Hon. W. Wrye
Minister of Labour



<i>1st Reading</i>	July 5th, 1985
<i>2nd Reading</i>	July 8th, 1985
<i>3rd Reading</i>	July 12th, 1985
<i>Royal Assent</i>	July 12th, 1985

Bill 32

1985

**An Act to amend the
Workers' Compensation Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Section 36 of the *Workers' Compensation Act*, being chapter 539 of the Revised Statutes of Ontario, 1980, as re-enacted by the Statutes of Ontario, 1984, chapter 58, section 9, is amended by adding thereto the following subsection:

(16) The amounts payable under this section as periodic payments shall be increased if the worker's death occurred on or before the 30th day of June, 1985 by adding thereto a factor of 5 per cent effective the 1st day of July, 1985, but the total periodic payments after the application of this subsection shall not exceed 90 per cent of the net average earnings of the deceased worker at the time of injury, calculated as if the worker's average earnings were \$31,500 per annum. Adjustment

(2) Subsection 36 (16) of the said Act, as enacted by subsection (1) of this section, does not apply where payments will be increased under subsection 42 (4), (5) or (6), as amended by section 2 of this Act.

2. Subsections 42 (3), (4), (5) and (6) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 58, section 11, are amended by striking out "\$10,500" wherever that amount appears and inserting in lieu thereof in each instance "\$11,025".

3.—(1) Section 45 of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 58, section 11, is amended by adding thereto the following subsection:

(13) The amounts payable under this section shall be increased if the worker's injury occurred on or before the 30th day of June, 1985 by adding thereto a factor of 5 per cent effective the 1st day of July, 1985, but the total payments after Adjustment

the application of this subsection shall not exceed 90 per cent of the net average earnings of the worker, calculated as if the worker's average earnings were \$31,500 per annum.

(2) Subsection 45 (13) of the said Act, as enacted by subsection (1) of this section, does not apply where payments will be increased under subsection 42 (3), as amended by section 2 of this Act.

4. Clause 52 (3) (b) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 38, section 6, is repealed and the following substituted therefor:

- (b) on application, an allowance not exceeding \$368 a year for the replacement or repair of clothing worn or damaged by reason of the wearing of a lower limb prosthesis or a back brace for a permanent back disability or a permanent leg brace, and not exceeding \$184 a year in respect of an upper limb prosthesis where the lower or upper limb prosthesis, back brace or permanent leg brace is supplied by the Board.

5. Section 133 of the said Act, as enacted by the Statutes of Ontario, 1984, chapter 58, section 37, is amended by adding thereto the following subsections:

Idem

(4) Where a worker who was in receipt of temporary disability benefits on the 1st day of April, 1985, and who was in receipt of such benefits on the 1st day of July, 1985 received an increase in benefits under subsection (3) that was less than 5 per cent, the Board shall adjust the rate of compensation by adding thereto an additional amount effective the 1st day of July, 1985, such that the increase in the rate under this subsection when combined with the increase under subsection (3) is equal to 5 per cent, but the compensation rate resulting from the adjustment shall not exceed the maximum established by sections 39 and 45, as continued by section 132, as if the maximum average earnings set out in the said section 45 were \$28,200 per annum.

Idem

(5) Where a worker was in receipt of temporary disability benefits on the 1st day of July, 1985, and the average earnings of the worker computed under section 45, as continued by section 132, were equal to or greater than \$26,800 per annum, the Board shall adjust the rate of compensation effective the 1st day of July, 1985, by adding thereto an additional 5 per cent, but the compensation rate resulting from the adjustment shall not exceed the maximum established by sections 39 and 45, as continued by section 132, as if the maximum average

earnings set out in the said section 45 were \$28,200 per annum.

(6) Subsection (5) does not apply to a worker who receives an adjustment under subsection (4). Non-application

6. The said Act is amended by adding thereto the following section:

133a. Clauses 36 (1) (c), (d), (e) and (f) of this Act, as continued by section 132, are repealed and the following substituted therefor: s. 36 (1) (c-f)
re-enacted

- (c) where the widow or widower is the sole dependant, a monthly payment of \$641, effective the 1st day of July, 1985;
- (d) where the dependants are a widow or widower and one or more children, a monthly payment of \$641 with an additional monthly payment of \$179 to be increased upon the death of the widow or widower to \$200 for each child under the age of sixteen years, effective the 1st day of July, 1985;
- (e) where the dependants are children, for each child under the age of sixteen years, a monthly payment of \$200, effective the 1st day of July, 1985;
- (f) where there are dependants other than those mentioned in clauses (c), (d) and (e), and there are no dependants who are persons referred to in the said clauses, a sum reasonable and proportionate to the pecuniary loss to such first-mentioned dependants occasioned by the death, to be determined by the Board, but not exceeding, in the whole, \$641 a month effective the 1st day of July, 1985.

7. Section 136 of the said Act, as enacted by the Statutes of Ontario, 1984, chapter 58, section 37, is amended by adding thereto the following subsection:

(2) Subsections 43 (8), (9) and (10) of this Act, as continued by section 132, are repealed and the following substituted therefor: s. 43 (8-10)
re-enacted

(8) The amounts payable under this section shall be increased if the injury occurred on or before the 31st day of March, 1985 by adding thereto a factor of 5 per cent effective the 1st day of July, 1985. Increase
in payments

Limitation
under this
section

(9) The amount of compensation to which a worker is entitled shall not exceed the like proportion of 75 per cent of the rate of average earnings of \$28,200.

Non-
application

(10) Subsections (8) and (9) do not apply to an award under clause 44 (b).

8. The said Act is further amended by adding thereto the following section:

s. 44
re-enacted

136a. Section 44 of this Act, as continued by section 132, is repealed and the following substituted therefor:

Minimum
amount of
compensation

44. Notwithstanding anything to the contrary in this Part, the amount of compensation to which an injured worker is entitled shall not be less than,

(a) for temporary total disability,

(i) \$198 a week, where the worker's average earnings were not less than \$198 a week, from the 1st day of July, 1985, and

(ii) the amount of the worker's earnings, where the worker's average earnings are less than \$198 a week, from the 1st day of July, 1985,

and for temporary partial disability, a proportionate amount in accordance with the impairment of earning capacity; and

(b) for permanent disability, the pension computed in accordance with sections 43 and 45, but the amount of such pension shall not be less than,

(i) for permanent total disability, \$868 a month from the 1st day of July, 1985, and

(ii) for permanent partial disability, an amount proportionate to that mentioned in subclause (i) in accordance with the impairment of earning capacity; or

(c) alternatively to subclause (b) (i), for permanent total disability, the benefits which would have been payable from time to time under clauses 36 (1) (c), (d) and (e) and under section 38, as if the worker had died from the injury.

9. Section 137 of the said Act, as enacted by the Statutes of Ontario, 1984, chapter 58, section 37, is amended by adding thereto the following subsection:

(2a) Section 52 of this Act, as amended by section 4 of the *Workers' Compensation Amendment Act, 1985*, being chapter 3, applies to this Act, as continued by section 132. Idem

10. Increases in amounts payable under the said Act, as a result of the enactment of this Act, apply to payments accruing on or after the 1st day of July, 1985, and nothing in this Act entitles any person to claim additional compensation for any period before the 1st day of July, 1985 or with respect to any award commuted or paid as a lump sum before that day. Transition

11. This Act shall be deemed to have come into force on the 1st day of July, 1985. Commence-
ment

12. The short title of this Act is the *Workers' Compensation Amendment Act, 1985*. Short Title

9271
B
056

Bill 33

An Act to amend the Planning Act, 1983

Mr. Swart



1st Reading July 9th, 1985

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTE

This Bill provides the means to ensure priority in preserving Ontario's best agricultural land for food growing purposes.

Bill 33

1985

An Act to amend the Planning Act, 1983

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The *Planning Act, 1983*, being chapter 1 of the Statutes of Ontario, 1983, is amended by adding thereto the following section:

2a. The Minister, the council of every municipality, every local board, every minister of the Crown and every ministry, board, commission or agency of the government, including the Municipal Board and Ontario Hydro shall, in exercising any authority that affects any planning matter, give priority to the preservation, for agricultural purposes, of all specialty crop lands and of lands designated as Class 1, 2 or 3 by the Canada Land Inventory of Soil Capability.

Preservation
of
agricultural
lands

2. This Act comes into force on the day it receives Royal Assent.

Commence-
ment

3. The short title of this Act is the *Planning Amendment Act, 1985*.

Short title

Bill 34

An Act to provide for Freedom of Information and Protection of Individual Privacy

The Hon. I. Scott
Attorney General



1st Reading July 12th, 1985

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTES

The Bill substantially implements the recommendations of the Report of the Commission on Freedom of Information and Individual Privacy (Williams Report).

PART I makes a minister who is to be designated responsible for administration of the Act and establishes the office of Information and Privacy Commissioner. The Commissioner is appointed by the Legislature and the office is set up in a manner similar to the Ombudsman's office.

PART II provides a right of access to government information subject only to specified exemptions. Also provided are the procedure to be followed in seeking access and the manner in which access is to be given. Time limits are imposed on the government for answering a request for access and providing the information. Provision is made for protecting those other persons whose privacy or rights might be affected by release of information. Government institutions are required to make information available to the public including how to request information, how the institution runs, what the institution does and guidelines used by the institution in making various decisions. They are also required to make annual reports with regard to the operation of this Act.

PART III provides for the protection of individual privacy by regulating the collection and disposal of personal information and regulating the circumstances under which personal information is to be used. Provision is made for organizing personal information into indexed data banks and for noting how personal information may be used. The individual to whom the information relates is given a right of access and a right of correction.

PART IV provides for an appeal to the Commissioner from a decision made under the Act. Provision is made for mediation, failing which the Commissioner is to hold an inquiry. Procedural safeguards are provided for the inquiry. The onus is placed on the government to prove that information should not be released. The Commissioner is empowered to make an order after the inquiry.

PART V provides for setting fees for the retrieval of information and for waiving those fees under some circumstances. This part also deals with the Commissioner's annual report, additional powers and duties, offences and other general matters.

Bill 34

1985

An Act to provide for Freedom of Information and Protection of Individual Privacy

CONTENTS

Section

1. Purposes
2. Definitions

PART I

ADMINISTRATION

3. Responsible minister
4. Information and Privacy Commissioner
5. Nature of employment
6. Salary and expenses
7. Temporary Commissioner
8. Staff
9. Administration

PART II

FREEDOM OF INFORMATION

ACCESS TO INFORMATION

10. Right of Access
11. Obligation to disclose

EXEMPTIONS

12. Cabinet records
13. Advice to government
14. Law enforcement
15. Relations with other governments
16. Defence
17. Third party information
18. Economic and other interests of Ontario
19. Solicitor client privilege
20. Danger to safety or health
21. Personal privacy
22. Information to be published
23. Severability of record

ACCESS PROCEDURE

24. Request
25. Request to be forwarded or transferred
26. Notice by head

Section

27. Extension of time
28. Affected persons
29. Contents of notice of refusal
30. Access to record

INFORMATION TO BE PUBLISHED OR AVAILABLE

31. Publication of information re institutions
32. Operation of institutions
33. Institution documents
34. Annual report of head

PART III

PROTECTION OF INDIVIDUAL PRIVACY

COLLECTION AND RETENTION OF PERSONAL INFORMATION

35. Collection of personal information
36. Manner of collection
37. Retention and disposal of personal information

USE AND DISCLOSURE OF PERSONAL INFORMATION

38. Use of personal information
39. Where disclosure permitted
40. Data banks
41. Personal information data bank index
42. Retention of record of use

RIGHT OF INDIVIDUAL TO WHOM PERSONAL INFORMATION RELATES TO ACCESS AND CORRECTION

43. Right of individual to whom personal information relates to access and correction

Section	Section
44. Procedure	56. Regulations
45. Exemptions	57. Offences
PART IV	58. Delegation of head's powers and liability of Crown
APPEAL	59. Crown privilege
46. Right to appeal and application	60. Review of other Acts
47. Mediator to try to effect settlement	61. Review of this Act
48. Inquiry	62. <i>Public Service Act</i> amended
49. Onus	63. Application
50. Order	64. Crown bound
51. Confidentiality	65. Commencement
52. Delegation by Commissioner	66. Short title
PART V	
GENERAL	
53. Costs	
54. Annual report of Commission	
55. Powers and duties of Commission	

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Purposes

1. The purposes of this Act are,

- (a) to provide a right of access to information under the control of an institution in accordance with the principles that,
 - (i) government information should be available to the public,
 - (ii) necessary exceptions to the right of access should be limited and specific, and
 - (iii) decisions on the disclosure of government information should be reviewed independently of government; and
- (b) to protect the privacy of individuals with respect to personal information about themselves held by an institution and to provide individuals with a right of access to that information.

Definitions

2. In this Act,

“data bank” means a collection of personal information which is organized and capable of being retrieved;

“head”, in respect of an institution, means,

- (a) in the case of a ministry, the minister of the Crown who presides over the ministry, and
- (b) in the case of any other institution, the person designated as head of that institution in the regulations;

“Information and Privacy Commissioner” and “Commissioner” mean the Commissioner appointed under subsection 4 (1);

“institution” means,

- (a) a ministry of the Government of Ontario, and
- (b) any agency, board, commission, corporation or other body designated as an institution in the regulations;

“personal information” means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except where they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and

- (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

"record" means any record of information however recorded, whether in printed form, on film, by electronic means or otherwise, and includes,

- (a) correspondence, a memorandum, a book, a plan, a map, a drawing, a diagram, a pictorial or graphic work, a photograph, a film, a microfilm, a sound recording, a videotape, a machine readable record, any other documentary material, regardless of physical form or characteristics, and any copy thereof, and
- (b) subject to the regulations, any record that does not exist but is capable of being produced from a machine readable record under the control of an institution by means of computer hardware and software or any other information storage equipment and technical expertise normally used by the institution;

"responsible minister" means the minister of the Crown who is designated by order of the Lieutenant Governor in Council under section 3.

PART I

ADMINISTRATION

Responsible
minister

3. The Lieutenant Governor in Council may by order designate a minister of the Crown to be the responsible minister for the purposes of this Act.

Information
and Privacy
Commis-
sioner

4.—(1) There shall be appointed, as an officer of the Legislature, an Information and Privacy Commissioner to exercise the powers and perform the duties prescribed by this Act.

Appointment

(2) The Commissioner shall be appointed by the Lieutenant Governor in Council on the address of the Assembly.

Term and
removal
from office

(3) The Commissioner shall hold office for a term of five years and may be reappointed for a further term or terms, but is removable at any time for cause by the Lieutenant Governor in Council on the address of the Assembly.

(4) The Commissioner may appoint an officer of his or her staff to be Assistant Information and Privacy Commissioner.

Assistant
Commis-
sioner

5.—(1) The Commissioner shall work exclusively as Commissioner and shall not hold any other office under the Crown or engage in any other employment.

Nature of
employment

(2) The *Public Service Act* and the *Public Service Superannuation Act* do not apply to the Commissioner.

R.S.O. 1980,
cc. 418, 419
not to apply

6.—(1) The Commissioner shall be paid a salary to be fixed by the Lieutenant Governor in Council.

Salary

(2) The salary of the Commissioner shall not be reduced except on the address of the Assembly.

Idem

(3) The Commissioner is entitled to be paid reasonable travelling and living expenses while absent from his or her ordinary place of residence in the exercise of any functions under this Act.

Expenses

(4) Part II of the *Legislative Assembly Retirement Allowances Act*, except sections 15 and 16 and subsection 18 (5), applies with necessary modifications to the Commissioner in the same manner as if the Commissioner were a member of the Legislative Assembly and for the purpose,

Pension
R.S.O. 1980,
c. 236

“average annual remuneration” means the average annual salary of the Commissioner during any five years of his or her service, which years need not be consecutive, during which his or her salary was highest;

“remuneration” means the salary of the Commissioner.

7. If, while the Legislature is not in session, the Commissioner dies, resigns or is unable or neglects to perform the functions of the office of Commissioner, the Lieutenant Governor in Council may appoint a Temporary Commissioner to hold office for a term of not more than six months who shall, while in such office, have the powers and duties of the Commissioner and shall be paid such salary or other remuneration and expenses as the Lieutenant Governor in Council may fix.

Temporary
Commis-
sioner

8.—(1) Subject to the approval of the Lieutenant Governor in Council, the Commissioner may employ mediators and any other officers and employees the Commissioner considers necessary for the efficient operation of the office and may determine their salary and remuneration and terms and conditions of employment.

Staff

Benefits

(2) The employee benefits applicable from time to time to the public servants of Ontario with respect to,

- (a) cumulative vacation and sick leave credits for regular attendance and payments in respect of such credits;
- (b) plans for group life insurance, medical-surgical insurance or long term income protection; and
- (c) the granting of leave of absence,

R.S.O. 1980,
c. 418

apply to the employees of the Commissioner and where such benefits are provided for in regulations made under the *Public Service Act*, the Commissioner, or any person authorized in writing by him or her, may exercise the powers and duties of a minister or deputy minister or of the Civil Service Commission under such regulations.

Employees' superannuation benefits

R.S.O. 1980,
c. 419

(3) The *Public Service Superannuation Act* applies to the permanent and probationary staff of the Commissioner as though the Commissioner were a commission designated by the Lieutenant Governor in Council under section 28 of that Act.

Premises and supplies

9.—(1) The Commissioner may lease any premises and acquire any equipment and supplies necessary for the efficient operation of the office of the Commissioner.

Salary and expenses

(2) The salary of the Commissioner and the expenses required for the operation of the office are payable out of moneys appropriated therefor by the Legislature.

Audit

(3) The accounts and financial transactions of the office of the Commissioner shall be audited annually by the Provincial Auditor.

PART II

FREEDOM OF INFORMATION

ACCESS TO RECORDS

Right of access

10. Every person has a right of access to a record or a part of a record in the custody or under the control of an institution unless the record or the part of the record falls within one of the exemptions under sections 12 to 22.

Obligation to disclose

11. Despite any other provision of this Act, a head shall, as soon as practicable, disclose any record to the public or

persons affected if the head has reasonable and probable grounds to believe that it is in the public interest to do so and that the record reveals a grave environmental, health or safety hazard to the public.

EXEMPTIONS

12.—(1) A head shall refuse to disclose a record where the disclosure would reveal the substance of deliberations of an Executive Council, including,

Cabinet
records

- (a) an agenda, minute or other record of the deliberations or decisions of the Executive Council or its committees;
- (b) a record containing proposals or recommendations submitted, or prepared for submission, to the Executive Council or its committees;
- (c) a record containing background explanations, analyses of problems or policy options submitted or prepared for submission to the Executive Council or its committees for their consideration in making decisions, before those decisions are made and implemented;
- (d) a record used for or reflecting consultation among ministers of the Crown on matters relating to the making of government decisions or the formulation of government policy;
- (e) a record prepared to brief a minister of the Crown in relation to matters that are before or are proposed to be brought before the Executive Council or its committees, or are the subject of consultations among ministers relating to government decisions or the formulation of government policy; and
- (f) draft legislation or regulations.

(2) Despite subsection (1), a head shall not refuse to disclose a record under subsection (1) where,

Exception

- (a) the record is more than twenty years old; or
- (b) the Executive Council for which, or in respect of which, the record has been prepared consents to access being given.

Advice to
government

13.—(1) A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution or a consultant retained by an institution.

Exception

(2) Despite subsection (1), a head shall not refuse to disclose,

- (a) factual material;
- (b) a statistical survey;
- (c) a report by a valuator, whether or not the valuator is an officer of the institution;
- (d) an environmental impact statement or similar record;
- (e) a report of a test carried out on a product for the purpose of government equipment testing or a consumer test report;
- (f) a report or study on the performance or efficiency of an institution, whether the report or study is of a general nature or is in respect of a particular program or policy;
- (g) a feasibility study or other technical study, including a cost estimate, relating to a government policy or project;
- (h) a report containing the results of field research undertaken before the formulation of a policy proposal;
- (i) a final plan or proposal for the reorganization of the function of an institution, or for the establishment of a new program, including a budgetary estimate for the program, whether or not the plan or proposal is subject to approval, unless the plan or proposal is to be submitted to the Executive Council;
- (j) a report of an interdepartmental committee task force or similar body, or of a committee or task force within an institution, which has been established for the purpose of preparing a report on a particular topic, unless the report is to be submitted to the Executive Council;

- (k) a report of a committee, council or other body which is attached to an institution and which has been established for the purpose of undertaking inquiries and making reports or recommendations to the institution;
- (l) a final decision, order or ruling of an officer of the institution made during or at the conclusion of the exercise of discretionary power conferred by or under an enactment or scheme administered by the institution, whether or not the enactment or scheme allows an appeal to be taken against the decision, order or ruling, and any reason explaining the decision, order or ruling, whether or not the reason,
 - (i) is contained in an internal memorandum of the institution or in a letter addressed by an officer or employee of the institution to a named person, or
 - (ii) was given by the officer who made the decision, order or ruling or was incorporated by reference into the decision, order or ruling.

(3) Despite subsection (1), a head shall not refuse to disclose a record under subsection (1) where the record is more than twenty years old. Idem

14.—(1) A head may refuse to disclose a record where the disclosure could reasonably be expected to, Law enforcement

- (a) interfere with a law enforcement matter;
- (b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
- (c) reveal investigative techniques and procedures currently in use or likely to be used;
- (d) disclose the identity of a confidential source of information, or disclose information furnished only by the confidential source;
- (e) endanger the life or physical safety of a law enforcement officer or any other person;
- (f) deprive a person of the right to a fair trial or impartial adjudication;

- (g) interfere with the gathering of or reveal intelligence information respecting organizations or persons;
- (h) reveal a record which has been confiscated from a person by a peace officer in accordance with an Act or regulation;
- (i) endanger the security of a building or the security of a vehicle carrying items, or of a system or procedure established for the protection of items, for which protection is reasonably required;
- (j) facilitate the escape from custody of a person who is under lawful detention;
- (k) jeopardize the security of a centre for lawful detention; or
- (l) facilitate the commission of an offence or hamper the control of crime.

Idem

(2) A head may refuse to disclose a record,

- (a) that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;
- (b) that is a law enforcement record where the disclosure would constitute an offence under an Act of Parliament;
- (c) that is a law enforcement record where the disclosure could reasonably be expected to expose the author of the record or any person who has been quoted or paraphrased in the record to civil liability; or
- (d) that contains information about the history, supervision or release of a person under the control or supervision of a correctional authority.

Refusal to
confirm or
deny
existence
of record

(3) A head may refuse to confirm or deny the existence of a record to which subsection (1) or (2) apply.

Review

(4) Where a head refuses to confirm or deny the existence of a record, the person who made the request may appeal to the Commissioner for a review of the head's decision.

15. A head may refuse to disclose a record where the disclosure could reasonably be expected to,

Relations
with other
governments

- (a) prejudice the conduct of intergovernmental relations by the Government of Canada or an institution;
- (b) reveal information received in confidence from another government or its agencies by an institution; or
- (c) reveal information received in confidence from an international organization of states or a body thereof by an institution,

and shall not disclose any such record without the prior approval of the Executive Council.

16. A head may refuse to disclose a record where the disclosure could reasonably be expected to prejudice the defence of Canada or of any foreign state allied or associated with Canada or be injurious to the detection, prevention or suppression of espionage, sabotage or terrorism and shall not disclose any such record without the prior approval of the Executive Council.

Defence

17.—(1) A head may refuse to disclose a record that reveals a trade secret or scientific, technical, commercial or financial information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,

Third party
information

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (b) result in information of the same kind no longer being supplied to the institution, where,
 - (i) the information was supplied to the institution on a confidential basis, and
 - (ii) it is in the public interest that similar information continue to be supplied to the institution; or
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency.

Exception

(2) Subsection (1) does not apply to a record where the public interest in its disclosure outweighs the interest of any person, group of persons, or organization in its continued confidentiality.

Economic
and
other
interests
of Ontario

18.—(1) A head may refuse to disclose a record that contains,

- (a) trade secrets or financial, commercial, scientific or technical information that belongs to the Government of Ontario or an institution and has monetary value or potential monetary value;
- (b) scientific or technical information obtained through research by an employee of an institution where the disclosure could reasonably be expected to deprive the employee of priority of publication;
- (c) information where the disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;
- (d) information where the disclosure could reasonably be expected to be injurious to the financial interests of the Government of Ontario or the ability of the Government of Ontario to manage the economy of Ontario;
- (e) positions, plans, procedures, criteria or instructions to be applied to any negotiations carried on or to be carried on by or on behalf of an institution or the Government of Ontario;
- (f) plans relating to the management of personnel or the administration of an institution that have not yet been put into operation or made public;
- (g) information including the proposed plans, policies or projects of an institution where the disclosure could reasonably be expected to result in premature disclosure of a pending policy decision or undue financial benefit or loss to a person.

Exception

(2) A head shall not refuse under subsection (1) to disclose a record that contains the results of product or environmental testing carried out by or for an institution, unless,

- (a) the testing was done as a service to a person, a group of persons or an organization other than an institution and for a fee; or
- (b) the testing was conducted as preliminary or experimental tests for the purpose of developing methods of testing.

(3) Subsection (1) does not apply to a record where the public interest in its disclosure outweighs the interest of the Government of Ontario in its continued confidentiality. Idem

19. A head may refuse to disclose a record that is subject to solicitor-client privilege. Solicitor-client privilege

20. A head may refuse to disclose a record where the disclosure could reasonably be expected to seriously threaten the safety or health of an individual. Danger to safety or health

21.—(1) A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except, Personal privacy

- (a) upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;
- (b) in compelling circumstances affecting the health or safety of an individual, if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates;
- (c) personal information collected and maintained specifically for the purpose of creating a record available to the general public;
- (d) under an Act of Ontario or Canada that expressly authorizes the disclosure;
- (e) for a research purpose if,
 - (i) the use of disclosure is consistent with the conditions or reasonable expectations of use and disclosure under which the personal information was provided, collected or obtained,
 - (ii) the research purpose for which the disclosure is to be made cannot be reasonably accom-

published unless the information is provided in individually identifiable form, and

(iii) terms and conditions relating to,

(A) security and confidentiality,

(B) the removal or destruction of the individual identifier or identifiers associated with the record at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research or statistical project, and

(C) the prohibition of any subsequent use or disclosure of the record in individually identifiable form without the express authorization of the institution,

have been approved by the responsible minister and the person obtaining the record has filed with the responsible minister a written statement indicating that the person understands and will abide by the terms and conditions; or

(f) if the disclosure does not constitute an unjustified invasion of personal privacy.

Criteria re
invasion of
privacy

(2) A person, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider whether,

- (a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Ontario and its agencies to public scrutiny;
- (b) access to the personal information may promote public health and safety;
- (c) access to the personal information will promote informed choice in the purchase of goods and services;
- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;

- (f) the personal information is highly sensitive;
- (g) the personal information is unlikely to be accurate or reliable;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence; and
- (i) the disclosure may unfairly damage the reputation of any person referred to in the record,

and shall take into account any other relevant circumstance.

(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

Presumed
invasion
of privacy

- (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation, except for personal information confirming an individual's presence in a health care facility;
- (b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;
- (c) relates to eligibility for social service or welfare benefits or to the determination of benefit levels;
- (d) relates to employment history;
- (e) was obtained on an income tax return or similar return or gathered by an institution for the purpose of collecting an income tax or similar tax;
- (f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;
- (g) consists of personal recommendations or evaluations, character references or personnel evaluations; or
- (h) indicates the individual's racial or ethnic origin or religious or political beliefs and associations.

(4) Despite subsection (3), clause (1) (f) does not apply to a record which,

Limitation

- (a) discloses the classification, salary range and benefits, or employment responsibilities of an individual who is or was an officer or employee of an institution or a member of the staff of a minister;
- (b) discloses financial or other details of a contract for personal services between an individual and an institution; or
- (c) discloses details of a licence or permit or a similar discretionary financial benefit conferred on an individual by an institution or a head under circumstances where,
 - (i) the individual represents 1 per cent or more of all persons and organizations in Ontario receiving a similar benefit, and
 - (ii) the value of the benefit to the individual represents 1 per cent or more of the total value of similar benefits provided to other persons and organizations in Ontario.

Information
soon to be
published

22. A head may refuse to disclose a record where,

- (a) the record or the information contained in the record has been published or is currently available to the public; or
- (b) the head believes on reasonable grounds that the record or the information contained in the record will be published by an institution within ninety days after the request is made or within such further period of time as may be necessary for printing or translating the material for the purpose of printing it.

Severability
of record

23. Where an institution receives a request for access to a record that falls under one of the exemptions under sections 12 to 22 and that record contains information which, if it were a separate record, would be required to be disclosed, the head shall release the information that would be required to be disclosed unless the information that falls under one of the exemptions is not reasonably severable from the whole record.

ACCESS PROCEDURE

Request

24.—(1) A person seeking access to a record shall make a request therefor in writing to the institution that the person

believes has custody or control of the record and shall provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record.

(2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

Sufficiency
of detail

25.—(1) Where an institution receives a request for access to a record that the institution does not have in its custody or under its control, the head shall make all necessary inquiries to determine whether another institution has custody or control of the record, and where the head determines that another institution has custody or control of the record, the head shall within 15 days after the request is received,

Request to
be forwarded

(a) forward the request to the other institution; and

(b) give written notice to the person who made the request that it has been forwarded to the other institution.

(2) Where an institution receives a request for access to a record and the head considers that another institution has a greater interest in the record, the head may transfer the request and, if necessary, the record to the other institution, within fifteen days after the request is received, in which case the head transferring the request shall give written notice of the transfer to the person who made the request.

Transfer of
request

(3) For the purpose of subsection (2), an institution has a greater interest in a record than another institution if,

Greater
interest

(a) the record was originally produced in or for the other institution; or

(b) in the case of a record not originally produced in or for an institution, the other institution was the first institution to receive the record or a copy thereof.

(4) Where a request is forwarded or transferred under subsection (1) or (2), the request shall be deemed to have been made to the institution to which it is forwarded or transferred on the day the institution to which the request was originally made received it.

When
transferred
request
deemed
made

26. Where a person requests access to a record, the head of the institution to which the request is made or if a request is forwarded or transferred under section 25, the head of the

Notice
by head

institution to which it is forwarded or transferred, shall, subject to sections 27 and 28, within thirty days after the request is received,

- (a) give written notice to the person who made the request as to whether or not access to the record or a part thereof will be given; and
- (b) if access is to be given, give the person who made the request access to the record or part thereof, or where necessary cause the record to be produced.

Extension
of time

27.—(1) A head may extend the time limit set out in subsection 25 (1) or (2) or section 26 for a period of time that is reasonable in the circumstances, where,

- (a) the request is for a large number of records or necessitates a search through a large number of records and meeting the time limit set out in subsection 25 (1) or (2) or section 26 would unreasonably interfere with the operations of the institution; or
- (b) consultations that cannot reasonably be completed within the time limit set out in subsection 25 (1) or (2) or section 26 are necessary to comply with the request.

Notice of
extension

(2) Where a head extends the time limit under subsection (1), the head shall give the person who made the request written notice of the extension setting out,

- (a) the length of the extension;
- (b) the reason for the extension; and
- (c) that the person who made the request may ask the Commissioner to review the extension.

Notice to
affected
person

28.—(1) Before a head grants a request for access to a record,

- (a) that the head has reason to believe might contain information referred to in subsection 17 (1) that affects the interest of a person other than the person requesting information; or
- (b) that is personal information coming within the exception in clause 21 (1) (f),

the head shall, where practicable, within thirty days after the request for access is received, give written notice in accordance with subsection (2) to the person to whom the information relates.

(2) The notice shall contain,

Contents
of notice

- (a) a statement that the head intends to release a record or part thereof that may affect the interests of the person;
- (b) a description of the contents of the record or part thereof that relate to the person; and
- (c) a statement that the person may, within twenty days after the notice is given, make representations to the head as to why the record or part thereof should not be disclosed.

(3) A head may extend the time set out in subsection (1) in respect of a request under this Act where the time limit set out in section 26 is extended under section 27 in respect of the same request, but no extension period under this subsection shall exceed the period of the extension under section 27.

Extension
of time

(4) Where a head gives notice to a person under subsection (1), the head shall also give the person who made the request written notice of delay, setting out,

Notice of
delay

- (a) that the record or part thereof may affect the interests of another party;
- (b) that the other party is being given an opportunity to make representations concerning disclosure; and
- (c) that the head will after twenty-one days decide whether or not to disclose the record.

(5) Where a notice is given under subsection (1), the person to whom the information relates may, within twenty days after the notice is given, make representations to the head as to why the record or the part thereof should not be disclosed.

Representa-
tion
re disclosure

(6) Representations under subsection (5) shall be made in writing unless the head permits them to be made orally.

Representa-
tion
in writing

(7) The head shall, within thirty days after the notice under subsection (1) is given, but not before the earlier of,

Decision re
disclosure

- (a) the day the response to the notice from the person to whom the information relates is received; or
- (b) twenty-one days after the notice is given,

decide whether or not to disclose the record or the part thereof and give written notice of the decision to the person to whom the information relates and the person who made the request.

Notice of
head's
decision
to disclose

(8) Where a head decides to disclose a record or part thereof under subsection (7), the head shall state in the notice that,

- (a) the person to whom the information relates may ask the Commissioner to review the decision within twenty days after the notice is given; and
- (b) the person who made the request will be given access thereto or to a part thereof, unless within twenty days after the notice is given, a review of the decision is requested.

Access to be
given unless
affected
person
appeals

(9) Where, under subsection 27 (7), the head decides to disclose the record or a part thereof, the head shall give the person who made the request access to the record or part thereof twenty days after notice is given under subsection 27 (7), unless the person to whom the information relates asks the Commissioner to review the decision.

Contents of
notice of
refusal

29.—(1) Where a head refuses to give access to a record or a part thereof under section 25, the head shall state in the notice given under section 26,

- (a) where the record does not exist or cannot be produced, that it does not exist or cannot be produced; or
- (b) where the record exists or can be produced,
 - (i) the specific provision of this Act under which access is refused,
 - (ii) the reason the provision named in subclause (i) applies to the record,
 - (iii) the name and office of the person responsible for making the decision to refuse access, and

- (iv) that the person who made the request may appeal to the Commissioner for a review of the decision.

(2) Despite subsection (1), where a head refuses to confirm ^{Idem} or deny the existence of a record under subsection 14 (1) or (2) (law enforcement exemption), the head shall state in the notice given under section 26,

- (a) that under subsection 14 (3) the head refuses to confirm or deny the existence of a record;
- (b) the name and office of the person responsible for making the decision; and
- (c) that the person who made the request may appeal to the Commissioner for a review of the decision.

(3) Where a head refuses to disclose a record or part ^{Idem} thereof under subsection 28 (7), the head shall state in the notice given under subsection 28 (7),

- (a) the specific provision of this Act under which access is refused;
- (b) the reason the provision named in clause (a) applies to the record;
- (c) the name and office of the person responsible for making the decision to refuse access; and
- (d) that the person who made the request may appeal to the Commissioner for a review of the decision.

(4) Where a head fails to comply with section 26 or subsection 28 (7), the head is, for the purposes of this Act, deemed ^{Deemed refusal} to have refused to give access to the record.

30.—(1) Subject to subsections (2) and (3), a person who is given access to a record or a part thereof under this Act shall be given a copy thereof unless it would not be reasonably practicable to reproduce the record or part thereof by reason of its length or nature, in which case the person shall be given an opportunity to examine the record or part thereof in accordance with the regulations. ^{Copy of record}

(2) A head has discretion to allow the person who is given access to the record to examine it or a part thereof in accordance with the regulations. ^{Access to original record}

Idem

(3) Where a person requests the opportunity to examine a record or a part thereof for the purpose of selecting those portions that the person wishes to have copied, and it is reasonably practicable to give the person that opportunity, the head shall allow the person to examine the record or part thereof in accordance with the regulations.

INFORMATION TO BE PUBLISHED OR AVAILABLE

Publication
of
information
re institutions

31. The Lieutenant Governor in Council shall cause to be published annually a compilation listing all institutions and, in respect of each institution, setting out,

- (a) where a request for a record should be made;
- (b) where the material referred to in sections 32, 33 and 34 has been made available; and
- (c) whether the institution has a library or reading room which is available for public use, and if so, its address.

Operation of
institutions

32. A head shall make available for inspection and copying by the public, at an office of the institution and at another government office or a public library, a fully indexed compilation containing,

- (a) a description of the organization and responsibilities of the institution including details of the programs and functions of each division or branch of the institution;
- (b) a list of the general classes or types of records prepared by or in the custody or control of the institution;
- (c) the title, business telephone number and business address of the head of the institution; and
- (d) any amendment of information referred to in clause (a), (b) or (c) which has been made available in accordance with this section.

Institution
documents

33.—(1) A head shall make available, in the manner described in section 32, any document which has been prepared by the institution and issued to officers of the institution and which contains,

- (a) interpretations of the provisions of any enactment or scheme administered by the institution where the

interpretations are to be applied by, or are to be guidelines for, any officer who determines,

- (i) an application by a person for a right, privilege or benefit which is conferred by the enactment or scheme,
 - (ii) whether to suspend, revoke or impose new conditions on a right, privilege or benefit already granted to a person under the enactment or scheme, or
 - (iii) whether to impose an obligation or liability on a person under the enactment or scheme; or
- (b) instructions to, and guidelines for, officers of the institution on the procedures to be followed, the methods to be employed or the objectives to be pursued in their administration or enforcement of the provisions of any enactment or scheme administered by the institution that affects the public.

(2) A head may delete from a document made available under subsection (1) any record or part of a record which the head would be entitled to refuse to disclose where the head includes in the document, Deletions

- (a) a statement of the fact that a deletion has been made;
- (b) a brief statement of the nature of the record which has been deleted; and
- (c) a reference to the provision of this Act on which the head relies.

(3) Subsections (1) and (2) apply to amendments to documents. Amendments

34.—(1) A head shall make an annual report, in accordance with subsection (2), to the Commissioner. Annual report of head

(2) A report made under subsection (1) shall specify, Contents of report

- (a) the number of requests for access to records made to the institution;
- (b) the number of refusals by the head to disclose a document, the provisions of this Act under which

disclosure was refused and the number of occasions on which each provision was invoked;

- (c) the number of applications to the Commissioner for review of a refusal to disclose a document and the number of applications for review of a decision by the head to charge a fee or of the amount of the fee under section 53;
- (d) the amount of fees collected by the institution under section 53;
- (e) the location of any reading room or other facility provided by the institution for the use of a person wishing to inspect or copy a document possessed by the institution; and
- (f) any other information indicating an effort by the institution to put into practice the purposes of this Act.

PART III

PROTECTION OF INDIVIDUAL PRIVACY

COLLECTION AND RETENTION OF PERSONAL INFORMATION

Definition

35.—(1) In this section and in section 36, “personal information” includes information that is not recorded and that is otherwise defined as “personal information” under this Act.

Collection of personal information

(2) No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute used for the purposes of law enforcement or necessary to the proper administration of a lawfully authorized activity.

Manner of collection

36.—(1) Personal information shall only be collected by an institution directly from the individual to whom the information relates unless,

- (a) the individual authorizes another manner of collection;
- (b) the personal information may be disclosed to the institution concerned under section 39;
- (c) the Commissioner has authorized the manner of collection under clause 55 (c);

- (d) the information is in a report from a reporting agency in accordance with the *Consumer Reporting Act*;

R.S.O. 1980,
c. 89

- (e) the information is collected for the purpose of the conduct of a proceeding in a court or judicial or quasi-judicial tribunal; or
- (f) the information is collected for the purpose of law enforcement.

(2) Where personal information is collected on behalf of an institution, the head shall, unless notice is waived by the responsible minister, inform the individual to whom the information relates of,

Notice to
individual

- (a) the legal authority for the collection;
- (b) the principal purpose or purposes for which the personal information is intended to be used; and
- (c) the title, business address and business telephone number of a public official who can answer the individual's questions about the collection.

(3) Subsection (2) does not apply where the personal information can be classified as an exemption under subsection 14 (1) or (2) (law enforcement).

Exception

37.—(1) Personal information that has been used by an institution shall be retained after use by the institution for the period prescribed by regulation in order to ensure that the individual to whom it relates has a reasonable opportunity to obtain access to the personal information.

Retention
of personal
information

(2) The head of a public institution shall ensure that personal information on the records of the institution is not used unless it is reasonably accurate and up to date.

Standard
of accuracy

(3) Subsection (2) does not apply to personal information collected for law enforcement purposes,

Exception

- (a) where the recipient works for an institution involved in law enforcement; or
- (b) where the head of the institution informs the recipient of the information that it may not be reliable.

(4) A head shall dispose of personal information under the control of the institution in accordance with the regulations

Disposal of
personal
information

and in accordance with any directives or guidelines issued by the responsible minister.

USE AND DISCLOSURE OF PERSONAL INFORMATION

Use of
personal
information

38. Personal information under the control of an institution shall not be used by the institution without the consent of the individual to whom the information relates except,

- (a) for the purpose for which it was obtained or compiled or for a use consistent with the purpose; or
- (b) for a purpose for which the information may be disclosed to the institution under section 39.

Where
disclosure
permitted

39.—(1) A head may disclose personal information under the control of the institution,

- (a) in accordance with Part II;
- (b) where disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and where disclosure is necessary and proper in the discharge of the institution's functions;
- (c) for the purpose of complying with an Act of the Legislature or an Act of Parliament or a treaty, agreement or arrangement thereunder;
- (d) where disclosure is by a law enforcement institution to a law enforcement institution in a foreign country under a written agreement, treaty or legislative authority or to another law enforcement institution in Canada;
- (e) where disclosure is to an institution to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
- (f) in compelling circumstances affecting the health or safety of an individual if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates;
- (g) in compassionate circumstances, to facilitate contact with the next of kin or a friend of an individual who is injured, ill or deceased;

- (h) to a member of the Legislative Assembly who has been authorized by a constituent to whom the information relates to make an inquiry on the constituent's behalf or, where the constituent is incapacitated, has been authorized by the next of kin or legal representative of the constituent;
- (i) to the Provincial Auditor;
- (j) to the Ombudsman;
- (k) to the responsible minister;
- (l) to the Information and Privacy Commissioner;
- (m) to the Government of Canada in order to facilitate the auditing of shared cost programs;
- (n) to the Archives of Ontario; and
- (o) to Statistics Canada.

(2) A head shall retain a copy of every request received by the institution under clause (1) (d) for the period of time as may be prescribed by regulation and shall, upon the request of the responsible minister, make the copy available to the responsible minister.

Retention of
requests
re law
enforcement

DATA BANKS

40. A head shall cause to be included in a data bank all personal information under the control of the institution that,

Data
banks

- (a) has been used, is being used or is available for use; or
- (b) is organized or intended to be retrieved by the individual's name or by an identifying number, symbol or other particular assigned to the individual.

41.—(1) The responsible minister shall publish at least once each year an index of all data banks containing personal information setting forth, in respect of each data bank,

Personal
information
data bank
index

- (a) its name and location;
- (b) the legal authority for its establishment;
- (c) the types of personal information maintained in it;

- (d) the principal uses of the personal information and the categories of users to whom disclosures from the system are typically made;
- (e) any other uses and purposes for which personal information in the data bank is used or disclosed on a regular basis;
- (f) the categories of individuals for whom records are maintained in the system;
- (g) the policies and practices applicable to the system with respect to storage, retrievability, access controls, retention and disposal of personal information maintained in the system; and
- (h) the title, business address and business telephone number of the official responsible for the operation of the data bank.

Availability
of index

(2) The responsible minister shall cause the index referred to in subsection (1) to be made available for inspection to the public as prescribed by regulation in conformity with the principle that every person is entitled to reasonable access to the index.

Retention of
record of use

42.—(1) A head shall retain a record of any use by the institution of personal information contained in a personal data bank and of any use or purpose for which the information is disclosed where the use or purpose is not included in the statements of uses and purposes set forth under clauses 41 (1) (d) and (e) and shall attach or link the record of use to the personal information.

Record of
use part of
personal
information

(2) A record retained under subsection (1) forms part of the personal information to which it is attached or linked.

Notice and
publication

(3) Where the personal information in a data bank under the control of an institution is used or disclosed for a use consistent with the purpose for which the information was obtained or compiled by the institution but the use is not one of the uses included under clauses 41 (1) (d) and (e), the head shall,

- (a) forthwith notify the responsible minister of the use or disclosure; and
- (b) ensure that the use is included in the next statement of consistent uses set forth in the index.

RIGHT OF INDIVIDUAL TO WHOM PERSONAL INFORMATION
RELATES TO ACCESS AND CORRECTION

43.—(1) Every individual has a right of access to,

Right of
access to
personal
information

- (a) any personal information about the individual contained in a data bank under the control of an institution; and
- (b) any other personal information about the individual under the control of an institution with respect to which the individual is able to provide sufficiently specific information to render it reasonably retrievable by the institution.

(2) Every individual who is given access under subsection (1) to personal information is entitled to,

Right of
correction

- (a) request correction of the personal information where the individual believes there is an error or omission therein;
- (b) require that a statement of disagreement be attached to the information reflecting any correction that was requested but not made; and
- (c) require that any person or body to whom the personal information has been disclosed within the year before the time a correction is requested or a statement of disagreement is required be notified of the correction or statement of disagreement.

44.—(1) An individual seeking access to personal information about the individual shall make a request therefor in writing to the institution that the individual believes has control of the personal information and shall identify the data bank or otherwise identify the location of the personal information.

Request

(2) Subsection 24 (2) and sections 23, 25, 26, 27 and 28 apply with necessary modifications to a request made under subsection (1).

Access
procedures

(3) Subject to the regulations, where an individual is to be given access to personal information requested under subsection (1), the head shall,

Manner
of access

- (a) permit the individual to examine the personal information; or
- (b) provide the individual with a copy thereof.

Compre-
hensible
form

(4) Where access to personal information is to be given, the head shall ensure that the personal information is provided to the individual in a comprehensible form and in a manner which indicates the general terms and conditions under which the personal information is stored and used.

Exemptions

45. A head may refuse to disclose personal information,

- (a) to which section 12, 13, 14, 15, 16, 17, 18, 19, 20 or 22 apply;
- (b) where the disclosure would constitute an unwarranted invasion of another individual's personal privacy;
- (c) that is evaluative or opinion material compiled solely for the purpose of determining suitability, eligibility or qualifications for employment or for the awarding of government contracts and other benefits where the disclosure would reveal the identity of a source who furnished information to the institution in circumstances where it may reasonably have been assumed that the identity of the source would be held in confidence;
- (d) that is medical information where the disclosure could reasonably be expected to prejudice the mental or physical health of the individual;
- (e) that is a correctional record where the disclosure could reasonably be expected to,
 - (i) seriously disrupt an individual's institutional, parole or mandatory supervision program,
 - (ii) reveal information supplied in confidence, or
 - (iii) result in physical or other harm to the individual or another person; or
- (f) that is a research or statistical record.

PART IV

APPEAL

Right to
appeal

46.—(1) A person who has made a request for,

- (a) access to a record under subsection 24 (1);

- (b) access to personal information under subsection 44 (1); or
- (c) correction of personal information under subsection 43 (2),

or a person who is given notice of a request under subsection 28 (1) may appeal any decision of a head under this Act to the Commissioner but the exercise of the discretion of a head to disclose or refuse to disclose a record which is found to be included under an exemption in section 13, 14, 15, 16, 17, 18, 19, 20 or 22 is not appealable.

(2) An appeal under subsection (1) shall be made within thirty days after the notice was given of the decision appealed from by filing with the Commissioner written notice of appeal.

Time for
application

(3) Upon receiving a notice of appeal, the Commissioner shall inform the head of the institution concerned and any other affected person of the notice of appeal.

Notice of
application
for appeal

(4) The *Ombudsman Act* does not apply in respect of a complaint for which an appeal is provided under this Act or to the Commissioner or the Commissioner's delegate acting under this Act.

Application
of
R.S.O. 1980,
c. 325

47. The Commissioner may authorize a mediator to investigate the circumstances of any appeal and to try to effect a settlement of the matter under appeal.

Mediator to
try to effect
settlement

48.—(1) Where a settlement is not effected under section 47, the Commissioner shall conduct an inquiry to review the head's decision.

Inquiry

(2) The *Statutory Powers Procedure Act* does not apply to an inquiry under subsection (1).

R.S.O. 1980,
c. 484
not to apply

(3) The inquiry may be conducted in private.

Inquiry in
private

(4) In an inquiry, the Commissioner may require to be produced to the Commissioner and may examine any record that is in the custody or under the control of an institution, despite Parts II and III of this Act or any other Act or privilege, and may enter and inspect any premises occupied by an institution for the purposes of the investigation.

Powers of
Commis-
sioner

(5) The Commissioner shall not retain any information obtained from a record under subsection (4).

Record not
retained by
Commis-
sioner

Examination
on site

(6) Despite subsection (4), a head may require that the examination of a record by the Commissioner be of the original at its site.

Notice of
entry

(7) Before entering any premises under subsection (4), the Commissioner shall notify the head of the institution occupying the premises of his or her purpose.

Examination
under oath

(8) The Commissioner may summon and examine on oath any person who, in the Commissioner's opinion, has information relating to the inquiry, and for that purpose the Commissioner may administer an oath.

Evidence
privileged

(9) Anything said or any information supplied or any document or thing produced by a person in the course of an inquiry by the Commissioner under this Act is privileged in the same manner as if the inquiry were a proceeding in a court.

Protection

(10) Except on the trial of a person for perjury in respect of his or her sworn testimony, no statement made or answer given by that or any other person in the course of an inquiry by the Commissioner is admissible in evidence in any court or at any inquiry or in any other proceedings, and no evidence in respect of proceedings before the Commissioner shall be given against any person.

Idem under
R.S.C. 1970,
c. E-10

(11) A person giving a statement or answer in the course of an inquiry before the Commissioner shall be informed by the Commissioner of his or her right to object to answer any question under section 5 of the *Canada Evidence Act*.

Prosecution

(12) No person is liable to prosecution for an offence against any Act, other than this Act, by reason of his or her compliance with a requirement of the Commissioner under this section.

Represent-
ations

(13) The person who requested access to the record, the head of the institution concerned and any affected party shall be given an opportunity to make representations to the Commissioner, but no person is entitled to be present during, to have access to or to comment on representations made to the Commissioner by any other person.

Right to
counsel

(14) The person who requested access to the record, the head of the institution concerned and any affected party may be represented by counsel or an agent.

49. The onus in an inquiry is on the head to prove that a report or part of a report falls within one of the specified exemptions in this Act. Onus

50.—(1) After all of the evidence for an inquiry has been received, the Commissioner shall make an order disposing of the issues raised by the appeal. Order

(2) The Commissioner's order may contain any terms and conditions the Commissioner considers appropriate. Terms and conditions

(3) The Commissioner shall give the appellant and the persons who received notice of the appeal under subsection 46 (3) written notice of the order. Notice of order

51.—(1) The Commissioner or any person acting on behalf of or under the direction of the Commissioner shall not disclose any information that comes to their knowledge in the performance of their powers, duties and functions under this Act. Confidentiality

(2) The Commissioner or any person acting on behalf or under the direction of the Commissioner is not compellable to give evidence in a court or in a proceeding of a judicial nature concerning anything coming to their knowledge in the exercise or performance of a power, duty or function under this Act. Not compellable witness

(3) No proceeding lies against the Commissioner or against any person acting on behalf or under the direction of the Commissioner for anything done, reported or said in good faith in the course of the exercise or performance or purported exercise or performance of a power, duty or function under this Act. Proceedings privileged

52.—(1) The Commissioner may in writing delegate a power or duty granted or vested in the Commissioner to an officer or officers of the Commission, except the power to delegate under this section, subject to such limitations, restrictions, conditions and requirements as the Commissioner may set out in the delegation. Delegation by Commissioner

(2) The Commissioner shall not delegate to a person other than the Assistant Information and Privacy Commissioner his or her power to require a record referred to in section 12 or 14 to be produced and examined. Exception re records under s. 12 or 14

PART V

GENERAL

Costs

53.—(1) Where no provision is made for a charge or fee under any other Act, a head may require the person who makes a request for access to a record or for correction of a record to pay,

- (a) a search charge for every hour of manual search required in excess of two hours to locate a record;
- (b) the costs of preparing the record for disclosure;
- (c) computer and other costs incurred in locating, retrieving, processing and copying a record; and
- (d) shipping costs.

Estimate
of costs

(2) The head of a public institution shall, before giving access to a record, give the person requesting access a reasonable estimate of any amount that will be required to be paid under this Act that is over \$25.

Waiver of
payment

(3) A head may waive the payment of all or any part of an amount required to be paid under this Act where, in the head's opinion, it is fair and equitable to do so after considering,

- (a) the extent to which the actual cost of processing, collecting and copying the record varies from the amount of the payment required by subsection (1);
- (b) whether the payment will cause a financial hardship for the person requesting the record;
- (c) whether dissemination of the record will benefit public health or safety;
- (d) the amount of the costs together with the fact that the record contains personal information relating to the person who requested it; and
- (e) any other matter prescribed in the regulations.

Review

(4) A person who is required to pay a fee under subsection (1) may ask the Commissioner to review the head's decision to charge a fee or the amount of the fee.

(5) The costs provided in this section shall be paid and distributed in the manner prescribed in the regulations. Disposition of payments

54.—(1) The Commissioner shall make an annual report, in accordance with subsection (2), to the Speaker of the Assembly who shall cause the report to be laid before the Assembly if it is in session or, if not, at the next ensuing session. Annual report of Commissioner

(2) A report made under subsection (1) shall contain, Contents of report

- (a) a summary of the nature and ultimate resolutions of appeals carried out under subsection 46 (1);
- (b) an assessment of the extent to which institutions are complying with this Act; and
- (c) the Commissioner’s recommendations with respect to the practices of particular institutions and with respect to proposed revisions to the Act and regulations.

55. The Commissioner may, Powers and duties of Commissioner

- (a) offer comment on the privacy protection implications of proposed legislative schemes or government programs;
- (b) after hearing the head, order an institution to,
 - (i) cease a collection practice, and
 - (ii) destroy collections of personal information,that contravene this Act;
- (c) in appropriate circumstances, authorize the collection of personal information otherwise than directly from the individual;
- (d) engage in or commission research into issues affecting the purposes of this Act; and
- (e) receive representations from the public concerning the operation of this Act.

56. The Lieutenant Governor in Council may make regulations, Regulations

- (a) respecting the procedures for access to original records under section 30;
- (b) respecting the procedures for access to personal information under subsection 44 (3);
- (c) respecting what records can be produced and how they are to be produced from machine readable records;
- (d) setting standards for and requiring administrative, technical and physical safeguards to ensure the security and confidentiality of records and personal information under the control of institutions;
- (e) setting standards for the accuracy and completeness of personal information that is under the control of an institution;
- (f) prescribing time periods for the purposes of subsections 37 (1) and 39 (2);
- (g) prescribing the payment and allocation of fees received under section 53;
- (h) prescribing matters to be considered in determining whether to waive all or part of the costs required under section 53;
- (i) designating any agency, board, commission, corporation or other body as an institution and designating a head for each such institution;
- (j) designating institutions not relieved of liability in respect of a tort under subsection 58 (4);
- (k) respecting any matter the Lieutenant Governor in Council considers necessary to carry out effectively the purposes of this Act.

Offences

57.—(1) No person shall,

- (a) wilfully disclose personal information in contravention of this Act;
- (b) wilfully maintain a data bank that contravenes this Act; or
- (c) obtain or attempt to obtain personal information under false pretences in contravention of this Act.

(2) Every person who contravenes subsection (1) is guilty of an offence and on conviction is liable to a fine not exceeding \$2,000. Penalty

58.—(1) A head may in writing delegate a power or duty granted or vested in the head to an officer or officers of the institution subject to such limitations, restrictions, conditions and requirements as the head may set out in the delegation. Delegation of head's powers

(2) No action or other proceeding lies against a head, or against a person acting on behalf or under the direction of the head, for damages resulting from the disclosure or non-disclosure in good faith of a record or any part of a record under this Act, or from the failure to give a notice required under this Act if reasonable care is taken to give the required notice. Protection from civil proceeding

(3) Subsection (2) does not by reason of subsections 5 (2) and (4) of the *Proceedings Against the Crown Act* relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (2) to which it would otherwise be subject, and the Crown is liable under that Act for any such tort in a like manner as if subsection (2) had not been enacted. Vicarious liability of Crown preserved
R.S.O. 1980, c. 393

(4) Subsection (2) does not relieve an institution that is designated by the regulations for the purposes of this section of liability in respect of a tort committed by a person mentioned in subsection (2) to which it would otherwise be subject and the institution is liable for any such tort in a like manner as if subsection (2) had not been enacted. Vicarious liability of certain institutions preserved

59.—(1) This Act does not impose any limitation on the information otherwise available by law to a party to litigation. Crown privilege

(2) This Act does not affect the power of a court or a tribunal to compel a witness to testify or compel the production of a document. Powers of courts and tribunals

60.—(1) The Standing Committee on Procedural Affairs shall undertake a comprehensive review of all confidentiality provisions contained in Acts in existence on the day this Act comes into force and shall make recommendations to the Legislative Assembly regarding, Review of other Acts

(a) the repeal of unnecessary or inconsistent provisions; and

(b) the amendment of provisions that do not conform to the purposes of this Act.

- Other Acts (2) This Act prevails over a confidentiality provision in any other Act unless the other Act specifically provides otherwise.
- Idem (3) Subsection (2) shall not have effect until two years after this section comes into force.
- Review of this Act **61.** The Standing Committee on Procedural Affairs shall, within three years after proclamation of this Act, undertake a comprehensive review of this Act and shall, within one year after beginning that review, make recommendations to the Legislative Assembly regarding amendments to this Act.
- 62.** Subsection 10 (1) of the *Public Service Act*, being chapter 418 of the Revised Statutes of Ontario, 1980, is amended by inserting after “legally” in the third line of the form of oath contained therein “authorized or”.
- Application **63.** This Act applies to any record in the custody or under the control of an institution regardless of whether it was recorded before or after this Act comes into force.
- Crown bound **64.** This Act binds the Crown.
- Commence-
ment **65.** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.
- Short title **66.** The short title of this Act is the *Freedom of Information and Protection of Privacy Act, 1985*.

Bill 35

An Act to amend the Education Act

Mr. Grande



1st Reading July 12th, 1985

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTE

Sections 34, 35 and 36 of the Act, which deal with the placement of hard to serve pupils, are replaced by a new section 34 that places a duty on boards to provide appropriate educational programs for all children and gives parents and pupils a right of appeal to the Ontario Special Education Board from all decisions of placement committees.

Bill 35

1985

An Act to amend the Education Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Sections 34, 35 and 36 of the *Education Act*, being chapter 129 of the Revised Statutes of Ontario, 1980, are repealed and the following substituted therefor:

34.—(1) In this section,

Definitions

“appropriate special education program and services”, when used in reference to a pupil, means a special education program and services that,

- (i) are implemented in accordance with an individual education plan prepared for the pupil,
- (ii) are based on a proper assessment of the pupil’s needs,
- (iii) give the pupil an opportunity to benefit,
- (iv) are suitable for the pupil,
- (v) are evaluated periodically,
- (vi) are equivalent to the educational programs and services offered to pupils who are not exceptional pupils, and
- (vii) are offered in a proper educational setting and in the least restrictive manner possible;

“Board” means the Ontario Special Education Board established by subsection (5);

“hard to serve pupil” means an exceptional pupil who suffers from a mental handicap or a mental and one or more addi-

tional handicaps and for whom care and treatment are primary educational needs that cannot be met by any board;

“placement committee” means a committee of a board established to make and review placements of exceptional pupils.

Placement
committee

(2) Where a teacher, principal, parent or pupil considers that a pupil is an exceptional pupil, that pupil shall be referred to a placement committee.

Duties

(3) A placement committee shall,

- (a) determine whether a pupil is an exceptional pupil;
- (b) determine, designate or design an appropriate special education program and services for the exceptional pupil;
- (c) review annually the special education program and services offered each exceptional pupil; and
- (d) refer a hard to serve pupil for whom no appropriate program and services are available to the Board.

Appeal

(4) A parent and pupil may appeal to the Board as of right any determination of a placement committee.

Ontario
Special
Education
Board

(5) The Ontario Special Education Board is hereby established.

Composition

(6) The Board shall be composed of a chairman, one or more vice-chairmen and as many members equal in number representative of boards and provincial associations or organizations of parents as the Lieutenant Governor in Council considers proper, all of whom shall be appointed by the Lieutenant Governor in Council.

Quorum

(7) The chairman or a vice-chairman, one member representing boards and one member representing provincial associations or organizations of parents are a quorum.

Panels

(8) The Board may sit in two or more panels simultaneously so long as a quorum of the Board is present in each panel.

Powers and
duties of
Board

(9) The Board shall exercise the powers and perform the duties conferred or imposed upon it by or under this Act.

Idem

(10) Without limiting the generality of subsection (9), the Board shall,

- (a) hear and determine appeals by parents and pupils from decisions of placement committees;
- (b) determine, designate or design an appropriate special education program and services for each hard to serve pupil referred to it by a placement committee; and
- (c) review annually the appropriate special education program and services offered to each hard to serve pupil until the pupil attains the age of twenty-one years.

(11) In the exercise of its powers under clauses (10) (b) and (c), the Board, with the parents' consent, may obtain and consider the report of an assessment of the hard to serve pupil conducted by a person considered by the Board to be competent for the purpose. Idem

(12) Where, after a hearing, the Board has reviewed the decision of a placement committee, the Board may, Powers

- (a) affirm the decision;
- (b) rescind the decision and direct the placement committee to make another decision that the placement committee is authorized to make under this Act and the regulations and that the Board considers proper; or
- (c) rescind the decision and determine, designate or design an appropriate special education program and services for the exceptional pupil.

(13) In the exercise of its powers under clauses (10) (b) and (c) and clause (12) (c), the Board may order a board to purchase a special education program and services from another board, from a centre, facility, home, hospital or institution that is approved, designated, established, licensed or registered under any Act, or from any other person. Purchase of service

(14) The *Statutory Powers Procedure Act* applies to all proceedings of the Board. Application of R.S.O. 1980, c. 484

(15) Without limiting the generality of subsection (14), the following code of procedure applies to all proceedings of a placement committee and of the Board: Code of procedure

1. Parents and pupils shall be given reasonable notice in writing of the placement committee's meeting or the Board's hearing, as the case may be.
2. The notice referred to in paragraph 1 shall include,
 - i. a statement of the time, place and purpose of the meeting or hearing,
 - ii. a written description of the special education program and services proposed for the pupil,
 - iii. a written description of any alternative special program and services that are available, and
 - iv. a statement of the rights of parents and pupils to inspect all relevant reports and documents, to obtain an independent assessment and to make submissions at the meeting or hearing.
3. Parents and pupils shall have an opportunity to examine and cross-examine witnesses, present arguments and make submissions.
4. Placement committee decisions and Board decisions shall be in writing, and shall include,
 - i. a statement of the special educational program and services proposed for the pupil by the Board, parent or pupil and of any other available alternative special program or services,
 - ii. a statement of the evidence upon which the decision was based, and
 - iii. a statement of the reasons for the decision.

Commence-
ment

2. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

3. The short title of this Act is the *Education Amendment Act, 1985*.

Bill 36

An Act to amend the Public Vehicles Act

Mr. Mackenzie



1st Reading July 12th, 1985
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTE

The Bill would prohibit passengers from occupying the part of a bus or streetcar to the immediate right of the driver's seat after the driver has asked them to clear that area.

Bill 36

1985

An Act to amend the Public Vehicles Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 23 of the *Public Vehicles Act*, being chapter 425 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following subsection:

(4) No person other than the driver or operator shall occupy any portion of a bus or streetcar, both as defined in the *Highway Traffic Act*, forward of the back of the driver's or operator's seat after the driver or operator has requested passengers to clear that portion of the bus or streetcar.

No
obstruction
of driver's
view
R.S.O. 1980,
c. 198

2. This Act comes into force on the day it receives Royal Assent.

Commence-
ment

3. The short title of this Act is the *Public Vehicles Amendment Act, 1985*.

Short title

Bill 37

An Act to amend the Human Rights Code, 1981

Ms. Gigantes



1st Reading October 17th, 1985
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTE

The purpose of the Bill is to prohibit discrimination on the basis of sexual orientation in connection with services, accommodation, contracts, employment and vocational associations.



Bill 37

1985

An Act to amend the Human Rights Code, 1981

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 1 of the *Human Rights Code, 1981*, being chapter 53, is amended by inserting after “sex” in the fourth line “sexual orientation”.

2. Subsection 2 (1) of the said Act is amended by inserting after “sex” in the fourth line “sexual orientation”.

3. Section 3 of the said Act is amended by inserting after “sex” in the third line “sexual orientation”.

4. Subsection 4 (1) of the said Act is amended by inserting after “sex” in the fourth line “sexual orientation”.

5. Section 5 of the said Act is amended by inserting after “sex” in the fifth line “sexual orientation”.

6. This Act comes into force on the day it receives Royal Assent. Commence-
ment

7. The short title of this Act is the *Human Rights Code Amendment Act, 1985*. Short title

Bill 38

An Act to amend the Municipal Elections Act

The Hon. B. Grandmaître
Minister of Municipal Affairs



1st Reading October 17th, 1985
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTE

This Bill amends the Act to conform to section 15 of the *Canadian Charter of Rights and Freedoms*.



Bill 38

1985

An Act to amend the Municipal Elections Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 1 of the *Municipal Elections Act*, being chapter 308 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1982, chapter 37, section 1, is further amended by adding thereto the following paragraph:

37. “spouse” means a person of the opposite sex to whom the person is married or with whom the person is living outside marriage in a conjugal relationship of at least one year’s duration.

2. Subsection 6 (1) of the said Act is amended by striking out “sixteen” in the second line and inserting in lieu thereof “eighteen”.

3. Clause 12 (b) of the said Act is repealed and the following substituted therefor:

(b) is a Canadian citizen; and

.

4. Clause 13 (b) of the said Act is repealed and the following substituted therefor:

(b) is a Canadian citizen; and

.

5. Section 14 of the said Act is repealed and the following substituted therefor:

14. Every person who is an inmate in a penal or correctional institution under sentence of imprisonment is disqualified from voting.

Disqualifi-
cation

6. Section 15 of the said Act is amended by striking out “or other British subject” in the third line.

7. Subsection 33 (2) of the said Act is amended by striking out “or other British subject” in the sixth line and in the ninth line.

8. Subsection 47 (1) of the said Act is repealed and the following substituted therefor:

Polling
places in
hospitals, etc.

(1) Where an institution for the reception, treatment or vocational training of persons who have served or are serving in the Canadian Forces or who are disabled, a hospital, a psychiatric facility, a home for the aged, a nursing home or other institution of twenty beds or more, in which chronically ill or infirm persons reside or a retirement home of fifty beds or more is situate in a municipality, a polling place shall be provided in such institution or upon the premises.

9.—(1) Subsection 67 (1) of the said Act is amended by striking out “or” at the end of clause (b), by adding “or” at the end of clause (c) and by adding thereto the following clause:

(d) a person who is an inmate in a penal or correctional institution and who is not under sentence of imprisonment,

(2) Subsection 67 (3) of the said Act is amended by striking out “husband or wife” in the fourth line and inserting in lieu thereof “or spouse”.

(3) A person who is an inmate in a penal or correctional institution and who is not under sentence of imprisonment may vote by proxy in the regular elections to be held in 1985 under the said Act in the polling subdivision in which the person normally resides notwithstanding that the person’s name is not entered in the polling list for the subdivision and notwithstanding that the person has not obtained a certificate under section 33 of the said Act.

(4) A person who is entitled to vote by proxy under subsection (3) may appoint in writing in Form 1 as the person’s voting proxy any other person who is eligible as an elector in the municipality in which the person appointing the proxy normally resides.

(5) Subsections 67 (3) to (10) of the said Act apply with necessary modifications where a proxy is appointed under subsection (4).

(6) If a person appointed as a voting proxy under subsection (4) applies to a deputy returning officer at a polling place for a ballot and the name of the person who appointed the proxy does not appear on the polling list or in a certificate issued under section 33 of the said Act as entitled to vote at the polling place, the name of the person appointing the proxy and the person's normal address shall be entered on the polling list by the deputy returning officer and the voting proxy shall be entitled to receive a ballot and to vote if the voting proxy has made the statutory declaration before the clerk in the form set out in Form 1 and otherwise establishes his or her identity to the satisfaction of the deputy returning officer and takes the oath required by subsection 67 (8) of the said Act.

10. Clause 121 (1) (e) of the said Act, as re-enacted by the Statutes of Ontario, 1982, chapter 37, section 25, is repealed.

11.—(1) This Act, except sections 3, 4, 6 and 7, shall be deemed to have come into force on the 3rd day of September, 1985. Commence-
ment

(2) Sections 3, 4, 6 and 7 come into force on the 1st day of July, 1988. Idem

12. The short title of this Act is the *Municipal Elections Amendment Act, 1985*. Short title

FORM 1

*Municipal Elections Amendment Act, 1985***APPOINTMENT OF VOTING PROXY
BY PERSON NOT UNDER SENTENCE**

This Form to be completed in duplicate.

Part I: To be completed by person appointing proxy.

1. My name is
(first names) (last name)

2. I am an inmate of
(name of institution)

3. I normally reside at
(street address or lot and
concession)
.....
(municipality)

4. I hereby appoint
(first names) (last name)

as my proxy to vote in the regular elections to be held in the municipality
named above in 1985. He/She lives at

.....
(street address or lot and concession)

.....
(municipality)

(Note the person appointed must be entitled to vote in the municipality in
which the election is being held.)

5. Indicate (x) in the appropriate spaces below, the facts applicable to you:

- ___ Resident in municipality
___ Spouse of owner of land in the municipality
___ Owner of land in municipality
___ Spouse of tenant of land in municipality
___ Separate school elector
___ Tenant of land in municipality
___ Public school elector

6. I have not voted in the elections being held in 1985 in the municipality
named above in paragraph 3.

7. I am entitled to have my name entered on the polling list for the appropriate polling subdivision in which I normally reside and to vote in the elections to be held in 1985 in the municipality named above in paragraph 3.

8. Date.....

.....
Signature of person appointing voting proxy

Part II: Statutory declaration of voting proxy to be made before the clerk of the municipality.

I,....., the undersigned voting proxy, hereby solemnly declare that I am the person appointed as voting proxy by Part I of this form.

I declare that I am entitled to vote at the elections now pending in the municipality named in paragraph 3 of Part I of this form.

I further declare that the person appointing me as voting proxy is entitled to have his or her name entered on the polling list and vote at the elections to be held in the municipality named in paragraph 3 of Part I of this form.

And I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

DECLARED before me at

.....

of

in the of.....

this.....day of....., 1985.

.....
Clerk of the municipality

.....
Name of Municipality

.....
Signature of voting proxy

Part III: Certificate to be completed by the clerk of the municipality.

I certify that:

1. I am satisfied that the person appointing a voting proxy by Part I of this form is entitled to vote at the municipal elections in this municipality in 1985.

2. the person referred to in paragraph 1 is entitled to vote in polling subdivision number (for ward number.....).

3. the person appointed as voting proxy by Part I of this form is a duly qualified elector in this municipality.

.....
Signature of Clerk

.....
Date Certified

.....
Name of Municipality

Bill 38

(Chapter 4
Statutes of Ontario, 1985)



An Act to amend the Municipal Elections Act

The Hon. B. Grandmaître
Minister of Municipal Affairs

<i>1st Reading</i>	October 17th, 1985
<i>2nd Reading</i>	October 24th, 1985
<i>3rd Reading</i>	October 24th, 1985
<i>Royal Assent</i>	October 28th, 1985

Bill 38

1985

An Act to amend the Municipal Elections Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 1 of the *Municipal Elections Act*, being chapter 308 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1982, chapter 37, section 1, is further amended by adding thereto the following paragraph:

37. "spouse" means a person of the opposite sex to whom the person is married or with whom the person is living outside marriage in a conjugal relationship of at least one year's duration.

2. Subsection 6 (1) of the said Act is amended by striking out "sixteen" in the second line and inserting in lieu thereof "eighteen".

3. Clause 12 (b) of the said Act is repealed and the following substituted therefor:

(b) is a Canadian citizen; and

.

4. Clause 13 (b) of the said Act is repealed and the following substituted therefor:

(b) is a Canadian citizen; and

.

5. Section 14 of the said Act is repealed and the following substituted therefor:

14. Every person who is an inmate in a penal or correctional institution under sentence of imprisonment is disqualified from voting.

Disqualifi-
cation

6. Section 15 of the said Act is amended by striking out “or other British subject” in the third line.

7. Subsection 33 (2) of the said Act is amended by striking out “or other British subject” in the sixth line and in the ninth line.

8. Subsection 47 (1) of the said Act is repealed and the following substituted therefor:

Polling
places in
hospitals, etc.

(1) Where an institution for the reception, treatment or vocational training of persons who have served or are serving in the Canadian Forces or who are disabled, a hospital, a psychiatric facility, a home for the aged, a nursing home or other institution of twenty beds or more, in which chronically ill or infirm persons reside or a retirement home of fifty beds or more is situate in a municipality, a polling place shall be provided in such institution or upon the premises.

9.—(1) Subsection 67 (1) of the said Act is amended by striking out “or” at the end of clause (b), by adding “or” at the end of clause (c) and by adding thereto the following clause:

(d) a person who is an inmate in a penal or correctional institution and who is not under sentence of imprisonment,

(2) Subsection 67 (3) of the said Act is amended by striking out “husband or wife” in the fourth line and inserting in lieu thereof “or spouse”.

(3) A person who is an inmate in a penal or correctional institution and who is not under sentence of imprisonment may vote by proxy in the regular elections to be held in 1985 under the said Act in the polling subdivision in which the person normally resides notwithstanding that the person’s name is not entered in the polling list for the subdivision and notwithstanding that the person has not obtained a certificate under section 33 of the said Act.

(4) A person who is entitled to vote by proxy under subsection (3) may appoint in writing in Form 1 as the person’s voting proxy any other person who is eligible as an elector in the municipality in which the person appointing the proxy normally resides.

(5) Subsections 67 (3) to (10) of the said Act apply with necessary modifications where a proxy is appointed under subsection (4).

(6) If a person appointed as a voting proxy under subsection (4) applies to a deputy returning officer at a polling place for a ballot and the name of the person who appointed the proxy does not appear on the polling list or in a certificate issued under section 33 of the said Act as entitled to vote at the polling place, the name of the person appointing the proxy and the person's normal address shall be entered on the polling list by the deputy returning officer and the voting proxy shall be entitled to receive a ballot and to vote if the voting proxy has made the statutory declaration before the clerk in the form set out in Form 1 and otherwise establishes his or her identity to the satisfaction of the deputy returning officer and takes the oath required by subsection 67 (8) of the said Act.

10. Clause 121 (1) (e) of the said Act, as re-enacted by the Statutes of Ontario, 1982, chapter 37, section 25, is repealed.

11.—(1) This Act, except sections 3, 4, 6 and 7, shall be deemed to have come into force on the 3rd day of September, 1985. Commence-
ment

(2) Sections 3, 4, 6 and 7 come into force on the 1st day of July, 1988. Idem

12. The short title of this Act is the *Municipal Elections Amendment Act, 1985*. Short title

FORM 1

*Municipal Elections Amendment Act, 1985***APPOINTMENT OF VOTING PROXY
BY PERSON NOT UNDER SENTENCE**

This Form to be completed in duplicate.

Part I: To be completed by person appointing proxy.

1. My name is
(first names) (last name)

2. I am an inmate of
(name of institution)

3. I normally reside at
(street address or lot and concession)

.....
(municipality)

4. I hereby appoint.....
(first names) (last name)

as my proxy to vote in the regular elections to be held in the municipality
named above in 1985. He/She lives at

.....
(street address or lot and concession)

.....
(municipality)

(Note the person appointed must be entitled to vote in the municipality in
which the election is being held.)

5. Indicate (x) in the appropriate spaces below, the facts applicable to you:

- ___ Resident in municipality
- ___ Spouse of owner of land in the municipality
- ___ Owner of land in municipality
- ___ Spouse of tenant of land in municipality
- ___ Separate school elector
- ___ Tenant of land in municipality
- ___ Public school elector

6. I have not voted in the elections being held in 1985 in the municipality
named above in paragraph 3.

7. I am entitled to have my name entered on the polling list for the appropriate polling subdivision in which I normally reside and to vote in the elections to be held in 1985 in the municipality named above in paragraph 3.

8. Date.....

Signature of person appointing voting proxy

Part II: Statutory declaration of voting proxy to be made before the clerk of the municipality.

I, _____, the undersigned voting proxy, hereby
solemnly declare that I am the person appointed as voting proxy by Part I
of this form.

I declare that I am entitled to vote at the elections now pending in the municipality named in paragraph 3 of Part I of this form.

I further declare that the person appointing me as voting proxy is entitled to have his or her name entered on the polling list and vote at the elections to be held in the municipality named in paragraph 3 of Part I of this form.

And I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

DECLARED before me at

of

in the of

this.....day of....., 1985.

Clerk of the municipality

Name of Municipality

Signature of voting proxy

Part III: Certificate to be completed by the clerk of the municipality.

I certify that:

1. I am satisfied that the person appointing a voting proxy by Part I of this form is entitled to vote at the municipal elections in this municipality in 1985.

2. the person referred to in paragraph 1 is entitled to vote in polling subdivision number (for ward number.....).

3. the person appointed as voting proxy by Part I of this form is a duly qualified elector in this municipality.

.....
Signature of Clerk

.....
Date Certified

.....
Name of Municipality

Bill 39

An Act to amend the Regional Municipality of Hamilton-Wentworth Act

Mr. Allen



1st Reading October 22nd, 1985
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTE

The Bill provides for election of the regional chairman by a general vote (rather than by the members of the Regional Council) and gives the Regional Council (rather than Cabinet) the right to appoint a majority of the members of the Hamilton-Wentworth Police Board.

Bill 39

1985

**An Act to amend the
Regional Municipality of Hamilton-Wentworth Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 6 of the *Regional Municipality of Hamilton-Wentworth Act*, being chapter 437 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

6. The Regional Council shall consist of twenty-eight members composed of,

Composition
of Regional
Council

- (a) a chairman elected by general vote of the electors of all the area municipalities;
- (b) the mayor of each area municipality;
- (c) sixteen members of council from the City of Hamilton being the remainder of the council of the City;
- (d) one member of council from the Town of Dundas elected by general vote of the electors of the said area municipality as a member of the Regional Council and the council of such area municipality;
- (e) one member of council from the Town of Stoney Creek elected by general vote of the electors of such area municipality as a member of the Regional Council and the council of such area municipality;
- (f) one member of council from the Town of Ancaster elected by general vote of the electors of such area municipality as a member of the Regional Council and the council of such area municipality;
- (g) one member of council from the Township of Flamborough elected by general vote of the electors of

such area municipality as a member of the Regional Council and the council of such area municipality;

- (h) the member of the council of the Township of Glanbrook elected by general vote.

2. Section 7 of the said Act is repealed.

3. Subsection 8 (3) of the said Act is amended by inserting after “than” in the second line “the chairman of the Regional Council or”.

4. Subsections 11 (1), (2) and (3) of the said Act are repealed and the following substituted therefor:

Vacancy,
chairman

(1) When a vacancy occurs in the office of the chairman, a successor shall be elected by general vote of the electors of all the area municipalities to hold office for the remainder of the term.

5.—(1) Clauses 91 (1) (a) and (b) of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 56, section 4, are repealed and the following substituted therefor:

- (a) three members of the Regional Council appointed by resolution of the Regional Council; and
- (b) two persons appointed by the Lieutenant Governor in Council.

(2) Subsection 91 (2) of the said Act is amended by striking out “Regional Council” in the second and third lines and inserting in lieu thereof “Lieutenant Governor in Council”.

Transition

6. Until the term of one of the three members of the Hamilton-Wentworth Regional Board of Commissioners of Police appointed by the Lieutenant Governor in Council before the coming into force of section 5 has expired, all three may continue to be members, but the Regional Council may appoint an additional person to be a member of the board until the number of members appointed by the Lieutenant Governor in Council is reduced to two.

Commence-
ment

7.—(1) This Act, except sections 1, 2, 3 and 4, comes into force on the day it receives Royal Assent.

Idem

(2) Sections 1, 2, 3 and 4 come into force on the 22nd day of October, 1986 and have effect for the purposes of the regular election to be held in that year.

8. The short title of this Act is the *Regional Municipality of* Short title
Hamilton-Wentworth Amendment Act, 1985.

Bill 40

An Act to amend the Time Act

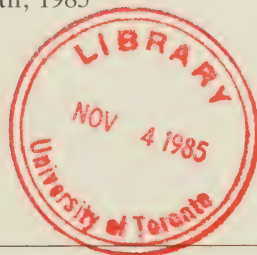
Mr. McClellan

1st Reading October 24th, 1985

2nd Reading

3rd Reading

Royal Assent



EXPLANATORY NOTE

The Bill would extend daylight saving time from the first Sunday in March to the first Sunday in November, subject to variation by regulation, thus providing for eight months of daylight saving time per year in Ontario.

Daylight saving time is not now subject to provincial or federal legislation. It is now applied by municipal ordinance from the last Sunday in April, i.e., about 8 weeks before the summer equinox on June 21, to the last Sunday in October, i.e., approximately four months after June 21. The Bill would extend this to about four months on either side of the summer equinox.

Bill 40

1985

An Act to amend the Time Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 2 (3) of the *Time Act*, being chapter 501 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

(3) Standard time as fixed by subsections (1) and (2) shall be advanced by one hour from 2 a.m. on the first Sunday in March of each year until 2 a.m. on the first Sunday in November of each year. Daylight
saving time

(4) The Lieutenant Governor in Council may make regulations varying the reckoning of standard time as fixed by subsection (1), (2) or (3). Power
to vary

2. This Act comes into force on the day it receives Royal Assent. Commence-
ment

3. The short title of this Act is the *Time Amendment Act*, 1985. Short title

Bill 41

An Act to repeal the Ontario Economic Council Act

The Hon. R. Nixon

Treasurer of Ontario and Minister of Economics

1st Reading October 24th, 1985

2nd Reading

3rd Reading

Royal Assent



EXPLANATORY NOTE

The Bill dissolves the Ontario Economic Council, makes transitional provisions for employees and obligations of the Council and repeals the Act under which the Council was established.

Bill 41

1985

An Act to repeal the Ontario Economic Council Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The term for which the chairman or any member of the Ontario Economic Council is appointed expires on the day this Act receives Royal Assent.

Term of
appointment
expires

2. The Ontario Economic Council, as continued by the *Ontario Economic Council Act*, being chapter 329 of the Revised Statutes of Ontario, 1980, is dissolved.

Council
dissolved

3. The Treasurer of Ontario and Minister of Economics shall assume the financial responsibilities of the Ontario Economic Council under any contract (other than a contract of employment) to which the Ontario Economic Council is a party and that was entered into by all parties thereto prior to the 24th day of October, 1985.

Disposition
of contracts

4. Officers and employees of the Council who have been appointed under the *Public Service Act* shall, wherever possible, be reassigned to other duties in the public service that provide equivalent remuneration.

Public
servants to
be assigned
R.S.O. 1980,
c. 418

5. The *Ontario Economic Council Act*, being chapter 329 of the Revised Statutes of Ontario, 1980, is repealed.

Repeal

6. This Act comes into force on the day it receives Royal Assent.

Commence-
ment

7. The short title of this Act is the *Ontario Economic Council Repeal Act, 1985*.

Short title

Bill 42

An Act to repeal the Ontario Education Capital Aid Corporation Act and the Ontario Universities Capital Aid Corporation Act

The Hon. R. Nixon

Treasurer of Ontario and Minister of Economics

1st Reading October 24th, 1985
2nd Reading
3rd Reading
Royal Assent



EXPLANATORY NOTE

The purpose of the Bill is to transfer the assets and liabilities of The Ontario Education Capital Aid Corporation and The Ontario Universities Capital Aid Corporation to the Treasurer of Ontario and wind up the corporations. The assets of the corporations consist primarily of debentures and bonds issued by municipalities, school boards, colleges, universities, the Art Gallery of Ontario, The Royal Ontario Museum and the Ontario College of Art. The liabilities of the corporations consist primarily of advances from the Treasurer of Ontario. The Bill also authorizes the Treasurer of Ontario to write down the debentures and bonds to reflect the net obligations of the issuers.

Bill 42

1985

**An Act to repeal the
Ontario Education Capital Aid Corporation Act and
the Ontario Universities Capital Aid Corporation Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.** In this Act, “Treasurer of Ontario” means the Treasurer of Ontario and Minister of Economics.

Definition
- 2.** The Ontario Education Capital Aid Corporation, continued under the *Ontario Education Capital Aid Corporation Act*, being chapter 330 of the Revised Statutes of Ontario, 1980 and The Ontario Universities Capital Aid Corporation, continued under the *Ontario Universities Capital Aid Corporation Act*, being chapter 360 of the Revised Statutes of Ontario, 1980, are dissolved.

Corporations dissolved
- 3.** The assets and liabilities of The Ontario Education Capital Aid Corporation and The Ontario Universities Capital Aid Corporation are vested in the Treasurer of Ontario.

Transfer of assets and liabilities to Treasurer
- 4.** The Treasurer of Ontario may delete from the accounts of the Province of Ontario the advances made to The Ontario Education Capital Aid Corporation and The Ontario Universities Capital Aid Corporation.

Deletion of advances
- 5.** The Treasurer of Ontario may, by written instrument directed to the issuer of a debenture or bond vested in the Treasurer of Ontario by this Act, release in whole or in part the issuer of any such debenture or bond from its obligation to pay principal or interest or both on the debenture or bond.

Release of debentures and bonds
- 6.** The *Ontario Education Capital Aid Corporation Act*, being chapter 330 of the Revised Statutes of Ontario, 1980, and the *Ontario Universities Capital Aid Corporation Act*, being chapter 360 of the Revised Statutes of Ontario, 1980, are repealed.

Repeals

Commence-
ment

7. This Act comes into force on the day it receives Royal Assent.

Short title

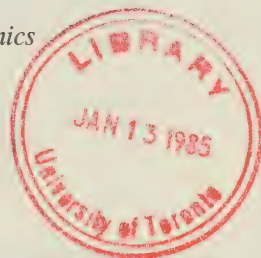
8. The short title of this Act is the *Capital Aid Corporations Repeal Act, 1985*.

Bill 42

*(Chapter 14
Statutes of Ontario, 1985)*

An Act to repeal the Ontario Education Capital Aid Corporation Act and the Ontario Universities Capital Aid Corporation Act

The Hon. R. Nixon
Treasurer of Ontario and Minister of Economics



<i>1st Reading</i>	October 24th, 1985
<i>2nd Reading</i>	December 19th, 1985
<i>3rd Reading</i>	December 20th, 1985
<i>Royal Assent</i>	December 20th, 1985

Bill 42

1985

**An Act to repeal the
Ontario Education Capital Aid Corporation Act and
the Ontario Universities Capital Aid Corporation Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.** In this Act, “Treasurer of Ontario” means the Treasurer of Ontario and Minister of Economics. Definition

- 2.** The Ontario Education Capital Aid Corporation, continued under the *Ontario Education Capital Aid Corporation Act*, being chapter 330 of the Revised Statutes of Ontario, 1980 and The Ontario Universities Capital Aid Corporation, continued under the *Ontario Universities Capital Aid Corporation Act*, being chapter 360 of the Revised Statutes of Ontario, 1980, are dissolved. Corporations dissolved

- 3.** The assets and liabilities of The Ontario Education Capital Aid Corporation and The Ontario Universities Capital Aid Corporation are vested in the Treasurer of Ontario. Transfer of assets and liabilities to Treasurer

- 4.** The Treasurer of Ontario may delete from the accounts of the Province of Ontario the advances made to The Ontario Education Capital Aid Corporation and The Ontario Universities Capital Aid Corporation. Deletion of advances

- 5.** The Treasurer of Ontario may, by written instrument directed to the issuer of a debenture or bond vested in the Treasurer of Ontario by this Act, release in whole or in part the issuer of any such debenture or bond from its obligation to pay principal or interest or both on the debenture or bond. Release of debentures and bonds

- 6.** The *Ontario Education Capital Aid Corporation Act*, being chapter 330 of the Revised Statutes of Ontario, 1980, and the *Ontario Universities Capital Aid Corporation Act*, being chapter 360 of the Revised Statutes of Ontario, 1980, are repealed. Repeals

Commence-
ment

7. This Act comes into force on the day it receives Royal Assent.

Short title

8. The short title of this Act is the *Capital Aid Corporations Repeal Act, 1985*.

Bill 43

An Act to authorize the Raising of Money on the Credit of the Consolidated Revenue Fund

The Hon. R. Nixon

Treasurer of Ontario and Minister of Economics

1st Reading October 24th, 1985

2nd Reading

3rd Reading

Royal Assent



EXPLANATORY NOTES

The purpose of the Bill is to provide authority for borrowing moneys for the Consolidated Revenue Fund. The principal borrowings authorized under the *Ontario Loan Act* in recent years have been from the following sources:

1. Canada Pension Plan
2. Teachers' Superannuation Fund
3. The public capital market

The amount of \$2,800,000,000 authorized by the Bill is intended to cover borrowing from the first two listed sources.

The Bill provides that any unused borrowing authority will expire on September 30th, 1986.

Bill 43

1985

**An Act to authorize the
Raising of Money on the Credit of the
Consolidated Revenue Fund**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) The Lieutenant Governor in Council is hereby authorized to raise from time to time by way of loan in any manner provided by the *Financial Administration Act* such sum or sums of money as are considered necessary for discharging any indebtedness or obligation of Ontario, for making any payments authorized or required by any Act to be made out of the Consolidated Revenue Fund or for reimbursing the Consolidated Revenue Fund for any moneys expended for any of such purposes, provided that the principal amount of any securities issued and temporary loans raised under the authority of this Act shall not exceed in the aggregate \$2,800,000,000.

Loans up to
\$2,800,000,000

R.S.O. 1980,
c. 161

(2) The sum of money authorized to be raised by subsection (1) for the purposes mentioned therein shall include the principal amounts of Province of Ontario debentures issued to the Teachers' Superannuation Fund under authority of the *Teachers' Superannuation Act, 1983* and to the Ontario Municipal Employees Retirement Fund under authority of the *Ontario Municipal Employees Retirement System Act*, but shall be in addition to all sums of money authorized to be raised by way of loan under any other Act.

Idem

1983, c. 84

R.S.O. 1980,
c. 348

2. No money shall be raised by way of loan under subsection 1 (1) except to the extent authorized by order of the Lieutenant Governor in Council made prior to the 30th day of September, 1986.

Limitation

Commence-
ment

3. This Act comes into force on the day it receives Royal Assent.

Short title

4. The short title of this Act is the *Ontario Loan Act, 1985*.

Bill 43

(Chapter 2
Statutes of Ontario, 1986)

An Act to authorize the Raising of Money on the Credit of the Consolidated Revenue Fund

The Hon. R. Nixon
Treasurer of Ontario and Minister of Economics



<i>1st Reading</i>	October 24th, 1985
<i>2nd Reading</i>	January 6th, 1986
<i>3rd Reading</i>	January 10th, 1986
<i>Royal Assent</i>	January 13th, 1986

Bill 43

1986

**An Act to authorize the
Raising of Money on the Credit of the
Consolidated Revenue Fund**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) The Lieutenant Governor in Council is hereby authorized to raise from time to time by way of loan in any manner provided by the *Financial Administration Act* such sum or sums of money as are considered necessary for discharging any indebtedness or obligation of Ontario, for making any payments authorized or required by any Act to be made out of the Consolidated Revenue Fund or for reimbursing the Consolidated Revenue Fund for any moneys expended for any of such purposes, provided that the principal amount of any securities issued and temporary loans raised under the authority of this Act shall not exceed in the aggregate \$2,800,000,000.

Loans up to
\$2,800,000,000

R.S.O. 1980,
c. 161

(2) The sum of money authorized to be raised by subsection (1) for the purposes mentioned therein shall include the principal amounts of Province of Ontario debentures issued to the Teachers' Superannuation Fund under authority of the *Teachers' Superannuation Act, 1983* and to the Ontario Municipal Employees Retirement Fund under authority of the *Ontario Municipal Employees Retirement System Act*, but shall be in addition to all sums of money authorized to be raised by way of loan under any other Act.

Idem

1983, c. 84

R.S.O. 1980,
c. 348

2. No money shall be raised by way of loan under subsection 1 (1) except to the extent authorized by order of the Lieutenant Governor in Council made prior to the 30th day of September, 1986.

Limitation

Commence-
ment

3. This Act comes into force on the day it receives Royal Assent.

Short title

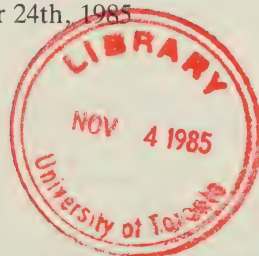
4. The short title of this Act is the *Ontario Loan Act, 1986*.

Bill 44

An Act to amend the Small Business Development Corporations Act

The Hon. R. Nixon
Minister of Revenue

1st Reading October 24th, 1985
2nd Reading
3rd Reading
Royal Assent



EXPLANATORY NOTES

The purpose of the Bill is,

- (a) to reduce the grant paid or tax credit approved as a deduction from corporations tax otherwise payable from 30 per cent to 25 per cent of the amount invested in a small business development corporation;
- (b) to provide a new class of small business development corporation allowed to invest only in northern and eastern Ontario to which the 30 per cent incentive will continue to apply; and
- (c) to ease the restrictions that govern registration as a small business development corporation where the corporation will invest in northern and eastern Ontario.

The Bill also enacts certain changes required as a consequence of the enactment of the *Business Corporations Act, 1982* and for the effective administration of the Act.

SECTION 1.—Subsection 1. The amendment changes a statutory reference to the *Business Corporations Act, 1982* which repealed and replaced the *Business Corporations Act, R.S.O. 1980, chapter 54*.

Subsection 2. The re-enactment of clause 1 (1) (f) brings the definition of “equity share” into conformity with the *Business Corporations Act, 1982*. Clause 1 (1) (f) now reads as follows:

- (f) “equity share” means any share of any class of shares of a corporation carrying voting rights under all circumstances and any share of any class of shares carrying voting rights by reason of the occurrence of any contingency that has occurred and is continuing.

Subsection 3. The amendment is consequential upon the enactment of the *Business Corporations Act, 1982*.

Subsection 4. The enactment of clause 1 (1) (ha) defines the new class of Northern and Eastern small business development corporation and the enactment of clause 1 (1) (q) adds a definition of “stated capital” and is consequential upon the enactment of the *Business Corporations Act, 1982*.

SECTION 2.—Subsections 1 and 2. The amendments are consequential upon the enactment of the *Business Corporations Act, 1982*.

Subsection 3. The re-enactment of paragraphs 3 and 4 of subsection 3 (2) is consequential upon the enactment of the *Business Corporations Act, 1982*. Paragraphs 3 and 4 now read as follows:

- 3. *The authorized capital, the classes of shares, if any, into which it is to be divided, the number of shares in each class, and the aggregate consideration exceeding which all shares of each class may not be issued.*
- 4. *The issued capital of each class of shares, including the aggregate consideration therefor.*

Subsection 4. The amendment adds the requirement that a corporation applying to be registered as a small business development corporation under the Act must submit to the Minister of Revenue, as part of its application, a copy of any shareholders’ agreement relating to the corporation to ensure its provisions do not contravene the provisions of the Act.

Subsection 5. The amendment deletes from subsection 3 (4) the requirement that a proposal for registration under the Act be executed under corporate seal as corporations are not required to have a corporate seal under the *Business Corporations Act, 1982*.

SECTION 3. The amendments are required to bring section 4 of the Act into conformity with, and are consequential upon the enactment of, the *Business Corporations Act, 1982*. The amendment also recognizes the new Northern and Eastern small business development corporation and provides for that class of small business development corporation to be distinguishable from others by incorporating “(Northern and Eastern)” in its name. Clauses 4 (c) to (e) now read as follows:

- (c) *its equity shares are without par value and may be issued for an aggregate consideration of not less than \$100,000 and not more than,*
 - (i) *\$5,000,000 in the case of a corporation that is not offering its equity shares to the public, and*
 - (ii) *\$10,000,000 in the case of a corporation that is offering its equity shares to the public;*
- (d) *the corporation has objects only to assist in the development of small businesses by,*
 - (i) *providing capital through the acquisition and holding of securities, and*
 - (ii) *providing business and managerial expertise to small businesses;*
- (e) *the corporation has equity capital of at least \$25,000; and*

SECTION 4. The enactment of subsections 5 (4) and (5) of the Act permits a small business development corporation to voluntarily withdraw from the program upon terms similar to the existing provisions which apply when a small business development corporation dissolves, winds up, has its registration under the Act revoked for cause, or redeems or repurchases its issued shares. The amendment will permit the Minister to deem an existing small business development corporation that meets the qualifications to be a Northern and Eastern small business development corporation.

SECTION 5.—Subsection 1. The re-enactment of subsection 7 (1) provides that a Northern and Eastern small business development corporation may have minimum equity capital of \$50,000 as compared to the \$100,000 minimum limit for other small business development corporations. Subsection 7 (1) now reads as follows:

(1) By the end of its first year of registration under this Act and at all times thereafter, a small business development corporation shall have equity shares issued and outstanding for equity capital of at least \$100,000, but not exceeding \$10,000,000 if the corporation is offering its equity shares to the public and \$5,000,000 in the case of any other corporation.

Subsection 2. The re-enactment of subsection 7 (4) of the Act provides that a grant or tax credit paid with respect to an equity share in a Northern and Eastern small business development corporation is paid or allowed from the northern and eastern Ontario incentive fund; other small business development corporations may elect only between the general fund and the new enterprise incentive fund. Subsection 7 (4) now reads as follows:

(4) Where a grant or tax credit with respect to any equity share has been paid or allowed out of an incentive fund referred to in clause 22a (1) (a) or (b), each eligible investment referred to in subsections (2) and (3) shall have been made after the 15th day of

May, 1984, and shall meet the prescribed conditions of being an eligible investment in a small business which is,

- (a) *primarily located in northern and eastern Ontario, if the grant or tax credit was paid or allowed out of the northern and eastern Ontario incentive fund; and*
- (b) *a new enterprise, if the grant or tax credit was paid or allowed out of the new enterprise incentive fund.*

SECTION 6.—Subsection 1. The re-enactment of subsections 8 (1) and (2) of the Act provides a method of new calculations of the amount that a small business development corporation must hold in trust and of the amount of trust moneys that may be released to the corporation upon each acquisition of an eligible investment based upon the reduction of the grant paid or tax credit from 30 per cent to 25 per cent of the amount invested in a small business development corporation. Subsections 8 (1) and (2) now read as follows:

(1) A small business development corporation shall set aside in a trust fund an amount of money equal to 30 per cent of all amounts received by it as equity capital and such trust fund shall be held by the corporation, or by a trustee on behalf of the corporation, in trust for the corporation and for the Crown jointly to be dealt with in accordance with this section.

(2) Subject to subsection (3), while any amount is held in trust under subsection (1), the Minister shall permit payment from the fund of an amount equal to three-sevenths of the purchase price paid by the small business development corporation to acquire any eligible investment, provided that the Minister is satisfied that the purchase price of such eligible investment has been paid in full in money or that the amount permitted to be paid out by the Minister will be used by the corporation in payment of the purchase price of the eligible investment.

Subsection 2. The amendment is consequent upon the re-enactment of paragraphs 1 to 4 of section 24 of the Act set out in section 14 of the Bill.

Subsection 3. The subsection added provides for the calculation of the trust fund to be retained where the Minister has allowed a grant or tax credit as a result of the taxpayer's having acquired fully paid up shares or advanced money to the eligible small business prior to the reduction in the rate of the grant or tax credit.

SECTION 7.—Subsections 1 and 2. The amendments permit the investment by small business development corporations in corporate small businesses which are primarily engaged in the separate category of prescribed northern and eastern Ontario business activities, if at least 75 per cent of the wages and salaries paid by such small businesses are paid to employees working in northern and eastern Ontario and if the small business meets the other requirements prescribed. Clause 9 (1) (a) now reads as follows:

- (a) the investment is made in a small business and 75 per cent or more of the wages and salaries of the small business are paid in respect of operations in Ontario.*

Subclause 9 (1) (b) (iii) now reads as follows:

- (iii) any other prescribed business activity.*

Subsections 3 and 4. The amendments are consequential upon the enactment of the *Business Corporations Act, 1982* which removed the requirement for corporations to have corporate objects.

Subsection 5. The clause that is added provides that only investments within the geographical boundaries of northern and eastern Ontario are eligible investments for the purpose of the new Northern and Eastern small business development corporation.

SECTION 8. The re-enactment of subsection 12 (3) of the Act provides that a single shareholder may hold a higher proportion of the shares, 20 per cent, in a Northern and Eastern small business development corporation than a single shareholder is permitted to hold in other small business development corporations and that there may be fewer shareholders involved in a Northern and Eastern small business development corporation. Subsection 12 (3) now reads as follows:

(3) *For the purposes of this section,*

- (a) *“major shareholder” means a person who holds 10 per cent or more of the voting rights attached to all equity shares of the small business development corporation for the time being outstanding; and*
- (b) *a small business development corporation is widely held if the corporation has ten or more shareholders, each holding not more than 10 per cent of the issued and outstanding equity shares of the corporation and none of the shareholders are associates or affiliated corporations.*

SECTION 9. The re-enactment of section 15 and the repeal of section 16 continue the existing provisions of sections 15 and 16 and are consequential upon the enactment of the *Business Corporations Act, 1982*. Sections 15 and 16 now read as follows:

15. *Notwithstanding the provisions of section 160 of the Business Corporations Act, every small business development corporation shall comply with the provisions of sections 161 and 162, subsections 163 (1) to (3), and section 164 and clause 165 (1) (c) and subsection 165 (3) of that Act in each year.*

16. *Within six months of the date to which it is made up, a small business development corporation shall file with the Minister its financial statements and the auditor's report thereon.*

SECTION 10. The re-enactment of subsection 17 (2) is consequential upon the enactment of the *Business Corporations Act, 1982* which permits a corporation to reduce the stated capital account of a class or series of shares in circumstances other than by way of a purchase, surrender, redemption or conversion of issued shares, and has the effect of requiring the small business development corporation to notify the Minister of Revenue of any proposed reduction of its stated capital accounts whether or not effected by way of the purchase, surrender, redemption or conversion of issued equity shares. The amendment also enlarges the categories of corporate action of which prior notice is to be given to the Minister of Revenue to include proposals made by a small business development corporation to its shareholders for arrangements under section 181 of the *Business Corporations Act, 1982* and the entering into or amendment of any shareholder agreement which relates to the small business development corporation or any corporation in which the small business development corporation maintains an investment. Subsection 17 (2) now reads as follows:

(2) *A small business development corporation shall notify the Minister in the prescribed form, of any action involving,*

- (a) *the proposed amendment of its articles of incorporation;*
- (b) *the purchase, surrender, redemption or conversion of any equity share of the corporation;*
- (c) *the disposition or sale of any eligible investment; or*
- (d) *the winding up or dissolution of the corporation,*

at least twenty-one days prior to carrying out the proposed action.

SECTION 11.—Subsection 1. The re-enactment of subsection 21 (1) provides for the payment of grants at the new rates of 30 per cent for a Northern and Eastern small business development corporation and 25 per cent for other small business development corporations. Subsection 21 (1) now reads as follows:

(1) Subject to subsections (2) and (3), a person who is the beneficial and registered owner of equity shares of a small business development corporation may make an application in the form prescribed by the Minister for a grant and the Minister may pay a grant equal to 30 per cent of the amount of money actually paid by the applicant to the small business development corporation for equity shares issued to him by the corporation.

Subsection 2. The subsections added provide a transitional provision that will allow an applicant to receive grants at the 30 per cent rate where fully paid shares were issued to the applicant or where the applicant advanced moneys to the eligible small business with the Minister's approval prior to Budget day.

SECTION 12.—Subsection 1. The re-enactment of subsection 22 (1) provides for the allowance of tax credits at the new rates of 30 per cent for a Northern and Eastern small business development corporation and 25 per cent for other small business development corporations. Subsection 22 (1) now reads as follows:

(1) Subject to subsection (2), a corporation that is the beneficial and registered owner of equity shares of a small business development corporation may, subject to the approval of the Minister, deduct from the tax otherwise payable by it under Part II of the Corporations Tax Act, an amount equal to 30 per cent of the amount of money actually paid by the corporation to the small business development corporation for equity shares issued to it by the corporation.

Subsection 2. The subsections added provide a transitional provision that will allow an applicant to receive tax credits at the 30 per cent rate where fully paid shares were issued to it or where it advanced moneys to the eligible small business with the Minister's approval prior to Budget day.

SECTION 13. The re-enactment of subsections 22a (3) and (4) provides that a grant or tax credit paid with respect to an equity share in a Northern and Eastern small business development corporation is paid or allowed from the northern and eastern Ontario incentive fund; other small business development corporations may elect only between the general fund and the new enterprise incentive fund. Subsections 22a (3) and (4) now read as follows:

(3) Prior to the Minister making a grant or allowing a tax credit to a shareholder of a small business development corporation in respect of equity shares issued after the 15th day of May, 1984, the small business development corporation shall file an election in the prescribed form designating, with respect to each such equity share, the fund described in subsection (1) from which a grant or tax credit is to be paid or allowed to the holder of such equity share.

(4) The Minister shall make a grant or allow a tax credit to a shareholder of the small business development corporation with respect to each equity share issued after the 15th day of May, 1984, only from the fund designated by the small business development corporation in the election filed under subsection (3).

SECTION 14. The re-enactment of paragraphs 1, 2, 3 and 4 of section 24 and the enactment of new paragraphs 4, 5, 6, 7, 8 and 9 clarify the current provisions with respect to the determination of when an amount is payable to the Minister by the small business development corporation as a recovery by the Minister of the grants paid and tax credits allowed to shareholders of the small business development corporation and the calculation of the amount, if any, payable. Paragraphs 1, 2, 3 and 4 of section 24 now read as follows:

1. *Where an equity share of the small business development corporation is purchased or otherwise acquired by it for a total consideration equal to or greater than that for which the share was issued, the small business development corporation shall pay to the Minister an amount of money equal to 30 per cent of the consideration paid to the corporation by the shareholder for the share at the time the share was issued.*
2. *Where an equity share of the small business development corporation is purchased or otherwise acquired by it for a total consideration that is less than that for which the share was issued, the small business development corporation shall pay to the Minister an amount equal to 30 per cent of the gross consideration paid by the corporation for the purchase or acquisition of the share.*
3. *Where the registration of a small business development corporation is revoked or where the corporation proposes to wind up or dissolve, it shall pay to the Minister an amount of money equal to 30 per cent of the value of all of its shareholders' equity to an amount not exceeding the aggregate of the grants or tax credits made or allowed by the Minister in respect of all equity shares then issued and outstanding at the time of revocation, winding up or dissolution, calculated in the prescribed manner.*
4. *Where the corporation proposes to wind up or dissolve or where the registration of a small business development corporation is revoked for failure to comply with subsection 7 (1) or (2), it shall pay to the Minister, in addition to the amount set out under paragraph 3, an amount equal to the interest earned on all moneys paid into the trust fund established by the corporation under section 8 and not paid out in accordance with subsection (2) of that section from the date of registration of the corporation under this Act.*

Bill 44

1985

**An Act to amend the
Small Business Development Corporations Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Clause 1 (1) (b) of the *Small Business Development Corporations Act*, being chapter 475 of the Revised Statutes of Ontario, 1980, is amended by striking out “*Business Corporations Act*” in the second and third lines and inserting in lieu thereof “*Business Corporations Act, 1982*”.

(2) Clause 1 (1) (f) of the said Act is repealed and the following substituted therefor:

(f) “equity share” means a share of any class or series of shares of a corporation carrying a voting right either under all circumstances or under circumstances that have occurred and are continuing, other than a share of a class or series that must vote separately by reason of a statutory requirement.

(3) Clause 1 (1) (m) of the said Act is amended by inserting after “class” in the first line “or series”.

(4) Subsection 1 (1) of the said Act, as amended by the Statutes of Ontario, 1984, chapter 30, section 1, is further amended by adding thereto the following clauses:

(ha) “Northern and Eastern small business development corporation” means a small business development corporation that may make investments only in small businesses that are primarily located within the geographic boundaries of northern and eastern Ontario as defined in the regulations;

.

1982, c. 4

- (q) “stated capital” and “stated capital account” have the same meaning as “stated capital” and “stated capital account” in the *Business Corporations Act, 1982*.

2.—(1) Subsection 3 (1) of the said Act is amended by striking out “*Business Corporations Act*” in the first and second lines and inserting in lieu thereof “*Business Corporations Act, 1982* or any predecessor Act”.

(2) Paragraph 2 of subsection 3 (2) of the said Act is amended by striking out “head office” in the first line and inserting in lieu thereof “registered office”.

(3) Paragraphs 3 and 4 of subsection 3 (2) of the said Act are repealed and the following substituted therefor:

3. The classes and series of shares, the maximum number of shares that the corporation is authorized to issue of each class and series and the aggregate consideration exceeding which all shares of each class and series may not be issued.
4. The amount of the stated capital account of each class and series of shares issued and the amount of equity capital for which the shares were issued.

(4) Subsection 3 (3) of the said Act is amended by adding at the end thereof “and a true copy of any shareholder agreement relating to the corporation”.

(5) Subsection 3 (4) of the said Act is amended by striking out “executed under the seal of the corporation and” in the first and second lines.

3. Clause 4 (c) of the said Act, as re-enacted by the Statutes of Ontario, 1981, chapter 35, section 2, and clauses 4 (d) and (e) of the said Act are repealed and the following substituted therefor:

- (c) the articles of the corporation limit the aggregate consideration which the corporation may receive on the issuance of classes and series of equity shares to not more than,
- (i) \$10,000,000 in the case of a corporation that is offering its equity shares to the public, and
 - (ii) \$5,000,000 in the case of any other corporation;

- (d) the articles of the corporation restrict the business of the corporation to assisting in the development of small businesses by,
 - (i) providing capital through the acquisition and holding of securities as permitted by this Act,
 - (ii) providing business and managerial expertise to small businesses, or
 - (iii) in the case of a Northern and Eastern small business development corporation, by providing the assistance described in subclauses (i) and (ii) to small businesses which meet the requirements of clause 9 (1) (a);
- (da) in the case of a Northern and Eastern small business development corporation, the corporation has included in its name “(Northern and Eastern)” or provides an undertaking satisfactory to the Minister at the time of registration to file articles of amendment changing its name to include that designation and to provide the Minister with a certified copy of the articles of amendment;
- (e) the total stated capital for classes and series of equity shares issued in consideration for equity capital is at least \$25,000; and

.

4. Section 5 of the said Act, as amended by the Statutes of Ontario, 1984, chapter 30, section 2, is further amended by adding thereto the following subsections:

- (4) Upon the request of a corporation registered under this Act, the Minister may accept the surrender of the registration of the corporation if, Surrender of
registration
- (a) the corporation pays to the Minister the amount, if any, required to be paid under section 24; and
 - (b) the corporation files with the Minister the prescribed information and meets such other conditions as may be prescribed.

Corporation
deemed
registered as
Northern and
Eastern
development
corporation

(5) Where a small business development corporation that was registered prior to the 24th day of October, 1985 has,

- (a) made investments only in small businesses primarily located within the geographic boundaries of northern and eastern Ontario as defined in the regulations;
- (b) met the requirements of clause 4 (da); and
- (c) complied fully with the Act, the spirit and intent of the Act and the regulations,

the Minister may, at the corporation's request, deem the corporation to be registered as a Northern and Eastern small business development corporation and amend the register accordingly.

5.—(1) Subsection 7 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 30, section 3, is repealed and the following substituted therefor:

Capital
requirements

(1) By the end of its first year of registration under this Act and at all times thereafter, a small business development corporation shall have equity shares issued and outstanding for equity capital of,

- (a) at least \$50,000 where the small business development corporation is a Northern and Eastern small business development corporation; or
- (b) at least \$100,000 where the small business development corporation is not a Northern and Eastern small business development corporation,

but not exceeding \$10,000,000 where the small business development corporation is offering its equity shares to the public and \$5,000,000 in the case of any other small business development corporation.

(2) Subsection 7 (4) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 30, section 3, is repealed and the following substituted therefor:

Idem

(4) Where a grant or tax credit with respect to any equity share has been paid or allowed out of an incentive fund referred to in clause 22a (1) (a) or (b), each eligible investment referred to in subsections (2) and (3) shall have been made after the 15th day of May, 1984, and shall meet the prescribed conditions of being an eligible investment,

- (a) where the small business development corporation is a Northern and Eastern small business development corporation, in a small business primarily located in northern and eastern Ontario where the grant or tax credit was paid or allowed out of the northern and eastern Ontario incentive fund; and
- (b) where the small business development corporation is not a Northern and Eastern small business development corporation,
 - (i) in a small business primarily located in northern and eastern Ontario where the grant or tax credit was paid or allowed out of the northern and eastern Ontario incentive fund prior to the 24th day of October, 1985, or
 - (ii) in a new enterprise, if the grant or tax credit was paid or allowed out of the new enterprise incentive fund.

6.—(1) Subsections 8 (1) and (2) of the said Act are repealed and the following substituted therefor:

(1) A small business development corporation shall set aside in a trust fund an amount of money, Trust fund

- (a) equal to 30 per cent of all amounts received by it as equity capital where the small business development corporation is a Northern and Eastern small business development corporation; or
- (b) equal to 25 per cent of all amounts received by it as equity capital where the small business development corporation is not a Northern and Eastern small business development corporation,

and such trust fund shall be held by a trustee on behalf of the corporation in trust for the corporation and for the Crown jointly to be dealt with in accordance with this section.

(2) Subject to subsection (3), while any amount is held in trust under subsection (1), the Minister shall permit payment from the fund of an amount equal to, Payment out of trust fund

- (a) .4286 of the purchase price paid by the small business development corporation to acquire an eligible investment where the shares of the small business development corporation were issued and fully paid for prior to the 24th day of October, 1985 or where

the small business development corporation is a Northern and Eastern small business development corporation; or

- (b) .3572 of the purchase price paid by the small business development corporation to acquire an eligible investment where the small business development corporation is not a Northern and Eastern small business development corporation and the shares of the small business development corporation were not issued and fully paid for prior to the 24th day of October, 1985,

provided that the Minister is satisfied that the purchase price of such eligible investment has been paid in full in money or that the amount to be permitted to be paid out by the Minister will be used by the corporation in payment of the purchase price of the eligible investment.

(2) Subsection 8 (4) of the said Act is amended by striking out “paragraph 4” in the first line and inserting in lieu thereof “paragraph 5”.

(3) Section 8 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 26, section 2, is further amended by adding thereto the following subsection:

Calculation
of trust fund

(7) Notwithstanding subsections (1) and (2), where the Minister has paid a grant pursuant to subsection 21 (8) or allowed a tax credit pursuant to subsection 22 (3), or where an applicant is deemed to have made an investment in equity shares of a small business development corporation pursuant to subsection 21 (9) or 22 (4), a small business development corporation shall set aside an amount of money equal to 30 per cent of all amounts received by it as equity capital prior to the 24th day of October, 1985, and the Minister shall permit payment from the fund in accordance with clause (2) (b).

7.—(1) Clause 9 (1) (a) of the said Act is repealed and the following substituted therefor:

- (a) the investment is made in a small business and 75 per cent or more of the wages and salaries are paid by the small business,
 - (i) to employees whose ordinary place of employment is a permanent establishment of the small business located in northern or eastern Ontario where the small business development corporation making the investment is a

Northern and Eastern small business development corporation, and

- (ii) in respect of operations in Ontario where the small business development corporation making the investment is not a Northern and Eastern small business development corporation.

(2) Subclause 9 (1) (b) (iii) of the said Act is repealed and the following substituted therefor:

- (iii) any other business activity that may be prescribed with respect to investment in a business located in northern or eastern Ontario by a Northern and Eastern small business development corporation where the small business development corporation making the investment is a Northern and Eastern small business development corporation, or

- (iv) any other prescribed business activity.

(3) Subclause 9 (1) (d) (ii) of the said Act, as amended by the Statutes of Ontario, 1981, chapter 35, section 4, is further amended by striking out “principal objects of the small business” in the second and third lines and inserting in lieu thereof “prescribed manufacturing and processing, prescribed tourist activities, business activities prescribed with respect to investment in a business located in northern or eastern Ontario by a Northern and Eastern small business development corporation or other prescribed business activity or activities in which the small business is primarily engaged”.

(4) Subclause 9 (1) (d) (v) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 30, section 4, is repealed and the following substituted therefor:

- (v) any prescribed purpose or use.

(5) Subsection 9 (1) of the said Act, as amended by the Statutes of Ontario, 1981, chapter 35, section 4 and 1984, chapter 30, section 4, is further amended by adding thereto the following clause:

- (fa) the investment is made in a small business primarily located within the geographical boundaries prescribed by the regulations where the investment is

made by a Northern and Eastern small business development corporation; and

8. Subsection 12 (3) of the said Act is repealed and the following substituted therefor:

Interpretation

(3) For the purposes of this section,

(a) “major shareholder” means a person who holds,

(i) 20 per cent where the small business development corporation is a Northern and Eastern small business development corporation, or

(ii) 10 per cent where the small business development corporation is not a Northern and Eastern small business development corporation,

or more of the voting rights attached to all equity shares of the small business development corporation from time to time outstanding;

(b) a small business development corporation is widely held if the corporation has,

(i) five or more shareholders, each holding not more than 20 per cent of the issued and outstanding shares of the corporation, where the small business development corporation is a Northern and Eastern small business development corporation, or

(ii) ten or more shareholders, each holding not more than 10 per cent of the issued and outstanding equity shares of the corporation, where the small business development corporation is not a Northern and Eastern small business development corporation,

and none of the shareholders is an associate or affiliated corporation; and

(c) where the small business development corporation is a Northern and Eastern small business development corporation, “associate” means, in addition to those definitions set out in subclauses 1 (1) (a) (ii) to (viii), any corporation of which such person beneficially owns directly or indirectly equity shares

carrying more than 20 per cent of the voting rights attached to all equity shares of the corporation for the time being outstanding.

9. Sections 15 and 16 of the said Act are repealed and the following substituted therefor:

15. Notwithstanding section 148 of the *Business Corporations Act, 1982*, every corporation in respect of a financial year or any part thereof during which the corporation was registered under this Act shall comply with the requirements of Part XII of the *Business Corporations Act, 1982* regarding the appointment and duties of an auditor and the corporation shall submit to the Minister within six months after the end of each financial year its financial statements for the year and the auditor's report thereon.

Application
of
1982, c. 4,
Pt. XII

10. Subsection 17 (2) of the said Act, as amended by the Statutes of Ontario, 1981, chapter 35, section 6, is repealed and the following substituted therefor:

(2) A small business development corporation shall notify the Minister, in the prescribed form, of any proposed action involving,

Notice to
Minister

- (a) any arrangement under section 181 of the *Business Corporations Act, 1982* that it proposes to place before its shareholders for approval;
- (b) any action by the corporation which would have the effect of reducing the stated capital account of any class or series of equity shares;
- (c) the purchase, surrender, redemption or conversion of any equity share of the corporation;
- (d) the disposition or sale of any eligible investment; or
- (e) the entering into, or amendment of, any shareholder agreement relating to the small business development corporation or any corporation in which the small business development corporation maintains an investment,

1982, c. 4

at least twenty-one days prior to carrying out the proposed action.

11.—(1) Subsection 21 (1) of the said Act is repealed and the following substituted therefor:

Payment
of grant

(1) Subject to subsections (2) and (3), a person who is the beneficial and registered owner of equity shares of a small business development corporation may make an application in the form prescribed by the Minister for a grant and the Minister may pay a grant equal to,

- (a) 30 per cent in the case of shares of a Northern and Eastern small business development corporation; or
- (b) 25 per cent in the case of shares of a small business development corporation that is not a Northern and Eastern small business development corporation,

of the amount of money actually paid by the applicant to the small business development corporation for equity shares issued to the applicant by that corporation.

(2) The said section 21, as amended by the Statutes of Ontario, 1983, chapter 26, section 6, is further amended by adding thereto the following subsections:

Transitional

(8) Notwithstanding subsection (1), the Minister may pay a grant equal to 30 per cent of the amount of money actually paid by the applicant to the small business development corporation for equity shares where the Minister is satisfied that the shares were fully paid for and issued to the applicant by the small business development corporation prior to the 24th day of October, 1985.

Idem

(9) Where, prior to the 24th day of October, 1985,

- (a) the Minister has consented in writing to the repayment of any advance owing to a shareholder of a small business development corporation in accordance with provisions prescribed under subclause 9 (1) (d) (v); and
- (b) a substantial portion of the advance approved by the Minister has been made,

an application for a grant under subsection (1) shall be treated as if an investment equal to the full amount of the advance approved by the Minister was paid by the applicant to the small business development corporation for equity shares that were fully paid for and issued to the applicant prior to the 24th day of October, 1985.

12.—(1) Subsection 22 (1) of the said Act is repealed and the following substituted therefor:

(1) Subject to subsection (2), a corporation that is the beneficial and registered owner of equity shares of a small business development corporation may, subject to the approval of the Minister, deduct from the tax otherwise payable by it under Part II of the *Corporations Tax Act*, an amount equal to,

Tax credit

R.S.O. 1980,
c. 97

- (a) 30 per cent in the case of shares of a Northern and Eastern small business development corporation; or
- (b) 25 per cent in the case of shares of a small business development corporation that is not a Northern and Eastern small business development corporation,

of the amount of money actually paid by the corporation to the small business development corporation for equity shares issued to it by the corporation.

(2) The said section 22 is amended by adding thereto the following subsections:

(3) Notwithstanding subsection (1), the Minister may approve the deduction by a corporation from the tax otherwise payable by it under Part II of the *Corporations Tax Act* of an amount equal to 30 per cent of the amount of money actually paid by the corporation to the small business development corporation for equity shares where the Minister is satisfied that such shares were fully paid for and issued to the corporation by the small business development corporation prior to the 24th day of October, 1985.

Transitional

R.S.O. 1980,
c. 97

(4) Where, prior to the 24th day of October, 1985,

Idem

- (a) the Minister has consented in writing to the repayment of any advance owing to a shareholder of a small business development corporation in accordance with provisions prescribed under subclause 9 (1) (d) (v); and
- (b) a substantial portion of the advance approved by the Minister has been made,

an application for a tax credit under subsection (1) shall be treated as if an investment equal to the full amount of the advance approved by the Minister was paid by the applicant to the small business development corporation for equity shares that were fully paid for and issued to the applicant prior to the 24th day of October, 1985.

13. Subsections 22a (3) and (4) of the said Act, as enacted by the Statutes of Ontario, 1984, chapter 30, section 8, are repealed and the following substituted therefor:

Incentive
fund election

(3) Before the Minister makes a grant or allows a tax credit to a shareholder of a small business development corporation that is not a Northern and Eastern small business development corporation in respect of equity shares issued on or after the 24th day of October, 1985, the small business development corporation shall file an election in the prescribed form designating, with respect to each such equity share, the fund described in clause (1) (b) or (c) from which a grant or tax credit is to be paid or allowed to the holder of such equity share.

Payment
from funds

(4) The Minister shall make a grant or allow a credit to a shareholder of a small business development corporation with respect to each equity share issued on or after the 24th day of October, 1985,

- (a) from the fund described in clause (1) (a), where the small business development corporation that issued the share is a Northern and Eastern small business development corporation; or
- (b) from the fund designated by the small business development corporation in the election filed under subsection (3) where the small business development corporation that issued the share is not a Northern and Eastern small business development corporation.

14. Paragraphs 1, 2, 3 and 4 of section 24 of the said Act are repealed and the following substituted therefor:

- 1. Where an equity share of the small business development corporation is purchased or otherwise acquired by the small business development corporation for a total consideration equal to or greater than that for which the share was issued, the small business development corporation shall pay to the Minister an amount equal to,
 - (a) in the case of an equity share of a small business development corporation issued and fully paid for prior to the 24th day of October, 1985,
 - (i) 30 per cent where, at the time of purchase or acquisition, the small business

development corporation does not maintain at least 70 per cent of its assets in the form of eligible investments or is not complying fully with the Act, the spirit and intent of the Act or the regulations, or

- (ii) 25 per cent where, at the time of purchase or acquisition, the small business development corporation is maintaining at least 70 per cent of its assets in the form of eligible investments and is complying fully with the Act, the spirit and intent of the Act and the regulations,

of the consideration paid to the corporation by the shareholder for the share at the time it was issued; or

- (b) in the case of an equity share of a small business development corporation issued and paid for on or after the 24th day of October, 1985, an amount equal to,

- (i) 30 per cent where the share is a share of a Northern and Eastern small business development corporation, or

- (ii) 25 per cent where the share is a share of a small business development corporation that is not a Northern and Eastern small business development corporation,

of the consideration paid to the corporation by the shareholder for the share at the time the share was issued.

2. Where an equity share of the small business development corporation is purchased or otherwise acquired by the small business development corporation for a total consideration that is less than that for which the share was issued, the small business development corporation shall pay to the Minister,

- (a) in the case of an equity share of a small business development corporation issued and fully paid for prior to the 24th day of October, 1985, an amount of money equal to,

(i) .4286 where, at the time of purchase or acquisition, the small business development corporation does not maintain at least 70 per cent of its assets in the form of eligible investments or is not complying fully with the Act, the spirit and intent of the Act or the regulations, or

(ii) .3572 where, at the time of purchase or acquisition, the small business development corporation is maintaining at least 70 per cent of its assets in the form of eligible investments and is complying fully with the Act, the spirit and intent of the Act and the regulations,

of the gross consideration paid by the corporation for the purchase or acquisition of the share; or

(b) in the case of an equity share of a small business development corporation issued and paid for on or after the 24th day of October, 1985, an amount equal to,

(i) .4286 where the share is a share of a Northern and Eastern small business development corporation, or

(ii) .3572 where the share is a share of a small business development corporation that is not a Northern and Eastern small business development corporation,

of the gross consideration paid by the corporation for the purchase or acquisition of the share.

3. Where the registration of a small business development corporation is revoked or where the corporation proposes to wind up or dissolve, it shall pay the Minister,

(a) in the case of a small business development corporation registered prior to the 24th day of October, 1985,

(i) where, at the time of the revocation, winding up or dissolution, the small business development corporation is not

maintaining 70 per cent of its assets in the form of eligible investments or is not complying with the Act, the spirit and intent of the Act and the regulations, an amount equal to,

(A) 30 per cent of the value of all of the small business development corporation's shareholders' equity to an amount not exceeding the aggregate of the grants or tax credits made or allowed by the Minister in respect of all shares issued and outstanding prior to the 24th day of October, 1985,

(B) 25 per cent of the value of all of the small business development corporation's shareholders' equity to an amount not exceeding the aggregate of the grants or tax credits made or allowed by the Minister in respect of all equity shares issued on or after the 24th day of October, 1985,

and outstanding at the time of revocation, winding up or dissolution, calculated in the manner prescribed, or

(ii) 25 per cent of the value of all the small business development corporation's shareholders' equity to an amount not exceeding the aggregate of the grants or tax credits made or allowed by the Minister in respect of all equity shares issued and outstanding at the time of the revocation, winding up or dissolution, calculated in the manner prescribed, where, at the time of the revocation, winding up or dissolution, the small business development corporation is maintaining 70 per cent of its assets in the form of eligible investments and is complying with the Act, the spirit and intent of the Act and the regulations;

(b) in the case of a small business development corporation registered after the 24th day of October, 1985, an amount equal to,

- (i) 30 per cent where the share is a share of a Northern and Eastern small business development corporation, or
- (ii) 25 per cent where the share is a share of a small business development corporation that is not a Northern and Eastern small business development corporation,

of the value of all of the small business development corporation's shareholders' equity to an amount not exceeding the aggregate of the grants or tax credits made or allowed by the Minister in respect of all equity shares issued and outstanding at the time of revocation, winding up or dissolution calculated in the manner prescribed.

4. Subject to paragraph 6, where a small business development corporation reduces by any other means the stated capital account of any class or series of equity shares, the small business development corporation shall pay to the Minister,

- (a) in the case of a reduction of stated capital with respect to shares issued prior to the 24th day of October, 1985, an amount equal to the lesser of the aggregate of the grants and tax credits made or allowed by the Minister in respect of all equity shares previously issued by the small business development corporation less any amounts previously paid to the Minister under this section and either,

- (i) 30 per cent of the amount of the reduction to the stated capital accounts where, at the time of the reduction of stated capital, the small business development corporation does not maintain at least 70 per cent of its assets in the form of eligible investments or is not complying fully with the Act, the spirit and intent of the Act or the regulations, or
- (ii) 25 per cent of the amount of the reduction to the stated capital accounts where, at the time of the reduction of stated capital, the small business development corporation is maintaining at least 70 per cent of its assets in the form of eligible

investments and is complying fully with the Act, the spirit and intent of the Act and the regulations;

- (b) in the case of a reduction of stated capital with respect to shares issued on or after the 24th day of October, 1985, an amount of money equal to the lesser of the aggregate of the grants and tax credits made or allowed by the Minister in respect of all equity shares previously issued by the small business development corporation less any amounts previously paid to the Minister under this subsection and either,
- (i) 30 per cent of the amount of the reduction to the stated capital accounts where the share is a share of a Northern and Eastern small business development corporation, or
 - (ii) 25 per cent of the amount of the reduction to the stated capital accounts where the share is a share of a small business development corporation that is not a Northern and Eastern small business development corporation.
5. Where a small business development corporation proposes to wind up or dissolve or where the registration of the small business development corporation is revoked or its registration is surrendered, the small business development corporation shall immediately pay to the Minister an amount of money, in addition to any other amount under this section, equal to the interest earned on all moneys paid into the trust account established by the small business development corporation under section 8 and not paid out in accordance with subsection 8 (2) or (2a) from the date of registration of the corporation under this Act.
6. No amount is payable to the Minister if the reduction to stated capital does not exceed real and unrealized losses associated with assets permitted to be held under section 10 and no reduction in stated capital has been made previously in respect of such losses.

7. For the purposes of this section, the amount to be paid by the small business development corporation to the Minister shall be calculated only with reference to equity shares on which a grant has been paid or a credit has been allowed under the Act and in respect of which no amount has been paid to the Crown pursuant to section 32.
8. For the purposes of this section, "shareholders' equity" means the aggregate of,
 - (a) the stated capital of all classes and series of equity shares;
 - (b) the retained earnings or deficit of the small business development corporation as adjusted to exclude,
 - (i) any prior losses from investments in assets not permitted under the Act,
 - (ii) any prior losses from activities not authorized by the articles of incorporation,
 - (iii) an amount equal to any prior profits less prior dividends paid and payable, to the extent that such amount does not exceed the amount of any prior losses from investments in assets permitted under section 10,
 - (iv) the amount of any prior dividends paid or dividends payable which have rendered or will render the small business development corporation insolvent within the meaning of the *Business Corporations Act, 1982* or which diminished or will diminish its capital, and
 - (v) expenses paid to an officer, director, shareholder or associate of the small business development corporation, or to an associate of any such officer, director or shareholder, to the extent that such expenses are, in the opinion of the Minister, unreasonable; and
 - (c) such other amounts as may be prescribed.

9. A small business development corporation shall be deemed to have disposed of all its assets at fair market value immediately prior to the revocation or surrender of its registration, its winding up or dissolution for the purpose of determining prior losses or prior profits under clause (b) of paragraph 8.

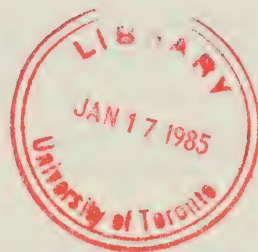
15. This Act comes into force on the day following the day it receives Royal Assent. Commence-
ment

16. The short title of this Act is the *Small Business Development Corporations Amendment Act, 1985*. Short title

Bill 44

An Act to amend the Small Business Development Corporations Act

The Hon. R. Nixon
Minister of Revenue



<i>1st Reading</i>	October 24th, 1985
<i>2nd Reading</i>	January 6th, 1986
<i>3rd Reading</i>	
<i>Royal Assent</i>	

(Reprinted as amended by the Committee of the Whole House)

EXPLANATORY NOTES

The purpose of the Bill is,

- (a) to reduce the grant paid or tax credit approved as a deduction from corporations tax otherwise payable from 30 per cent to 25 per cent of the amount invested in a small business development corporation;
- (b) to provide a new class of small business development corporation allowed to invest only in northern and eastern Ontario to which the 30 per cent incentive will continue to apply; and
- (c) to ease the restrictions that govern registration as a small business development corporation where the corporation will invest in northern and eastern Ontario.

The Bill also enacts certain changes required as a consequence of the enactment of the *Business Corporations Act, 1982* and for the effective administration of the Act.

SECTION 1.—Subsection 1. The amendment changes a statutory reference to the *Business Corporations Act, 1982* which repealed and replaced the *Business Corporations Act, R.S.O. 1980*, chapter 54.

Subsection 2. The re-enactment of clause 1 (1) (f) brings the definition of “equity share” into conformity with the *Business Corporations Act, 1982*. Clause 1 (1) (f) now reads as follows:

- (f) “equity share” means any share of any class of shares of a corporation carrying voting rights under all circumstances and any share of any class of shares carrying voting rights by reason of the occurrence of any contingency that has occurred and is continuing.

Subsection 3. The amendment is consequential upon the enactment of the *Business Corporations Act, 1982*.

Subsection 4. The enactment of clause 1 (1) (ha) defines the new class of Northern and Eastern small business development corporation and the enactment of clause 1 (1) (q) adds a definition of “stated capital” and is consequential upon the enactment of the *Business Corporations Act, 1982*.

SECTION 2.—Subsections 1 and 2. The amendments are consequential upon the enactment of the *Business Corporations Act, 1982*.

Subsection 3. The re-enactment of paragraphs 3 and 4 of subsection 3 (2) is consequential upon the enactment of the *Business Corporations Act, 1982*. Paragraphs 3 and 4 now read as follows:

- 3. *The authorized capital, the classes of shares, if any, into which it is to be divided, the number of shares in each class, and the aggregate consideration exceeding which all shares of each class may not be issued.*
- 4. *The issued capital of each class of shares, including the aggregate consideration therefor.*

Subsection 4. The amendment adds the requirement that a corporation applying to be registered as a small business development corporation under the Act must submit to the Minister of Revenue, as part of its application, a copy of any shareholders’ agreement relating to the corporation to ensure its provisions do not contravene the provisions of the Act.

Subsection 5. The amendment deletes from subsection 3 (4) the requirement that a proposal for registration under the Act be executed under corporate seal as corporations are not required to have a corporate seal under the *Business Corporations Act, 1982*.

SECTION 3. The amendments are required to bring section 4 of the Act into conformity with, and are consequential upon the enactment of, the *Business Corporations Act, 1982*. The amendment also recognizes the new Northern and Eastern small business development corporation and provides for that class of small business development corporation to be distinguishable from others by incorporating "(Northern and Eastern)" in its name. Clauses 4 (c) to (e) now read as follows:

- (c) *its equity shares are without par value and may be issued for an aggregate consideration of not less than \$100,000 and not more than,*
 - (i) *\$5,000,000 in the case of a corporation that is not offering its equity shares to the public, and*
 - (ii) *\$10,000,000 in the case of a corporation that is offering its equity shares to the public;*
- (d) *the corporation has objects only to assist in the development of small businesses by,*
 - (i) *providing capital through the acquisition and holding of securities, and*
 - (ii) *providing business and managerial expertise to small businesses;*
- (e) *the corporation has equity capital of at least \$25,000; and*

SECTION 4. The enactment of subsections 5 (4) and (5) of the Act permits a small business development corporation to voluntarily withdraw from the program upon terms similar to the existing provisions which apply when a small business development corporation dissolves, winds up, has its registration under the Act revoked for cause, or redeems or repurchases its issued shares. The amendment will permit the Minister to deem an existing small business development corporation that meets the qualifications to be a Northern and Eastern small business development corporation.

SECTION 5.—Subsection 1. The re-enactment of subsection 7 (1) provides that a Northern and Eastern small business development corporation may have minimum equity capital of \$50,000 as compared to the \$100,000 minimum limit for other small business development corporations. Subsection 7 (1) now reads as follows:

(1) By the end of its first year of registration under this Act and at all times thereafter, a small business development corporation shall have equity shares issued and outstanding for equity capital of at least \$100,000, but not exceeding \$10,000,000 if the corporation is offering its equity shares to the public and \$5,000,000 in the case of any other corporation.

Subsection 2. The re-enactment of subsection 7 (4) of the Act provides that a grant or tax credit paid with respect to an equity share in a Northern and Eastern small business development corporation is paid or allowed from the northern and eastern Ontario incentive fund; other small business development corporations may elect only between the general fund and the new enterprise incentive fund. Subsection 7 (4) now reads as follows:

(4) Where a grant or tax credit with respect to any equity share has been paid or allowed out of an incentive fund referred to in clause 22a (1) (a) or (b), each eligible investment referred to in subsections (2) and (3) shall have been made after the 15th day of

May, 1984, and shall meet the prescribed conditions of being an eligible investment in a small business which is,

- (a) primarily located in northern and eastern Ontario, if the grant or tax credit was paid or allowed out of the northern and eastern Ontario incentive fund; and
- (b) a new enterprise, if the grant or tax credit was paid or allowed out of the new enterprise incentive fund.

SECTION 6.—Subsection 1. The re-enactment of subsections 8 (1) and (2) of the Act provides a method of new calculations of the amount that a small business development corporation must hold in trust and of the amount of trust moneys that may be released to the corporation upon each acquisition of an eligible investment based upon the reduction of the grant paid or tax credit from 30 per cent to 25 per cent of the amount invested in a small business development corporation. Subsections 8 (1) and (2) now read as follows:

(1) A small business development corporation shall set aside in a trust fund an amount of money equal to 30 per cent of all amounts received by it as equity capital and such trust fund shall be held by the corporation, or by a trustee on behalf of the corporation, in trust for the corporation and for the Crown jointly to be dealt with in accordance with this section.

(2) Subject to subsection (3), while any amount is held in trust under subsection (1), the Minister shall permit payment from the fund of an amount equal to three-sevenths of the purchase price paid by the small business development corporation to acquire any eligible investment, provided that the Minister is satisfied that the purchase price of such eligible investment has been paid in full in money or that the amount permitted to be paid out by the Minister will be used by the corporation in payment of the purchase price of the eligible investment.

Subsection 2. The amendment is consequent upon the re-enactment of paragraphs 1 to 4 of section 24 of the Act set out in section 14 of the Bill.

Subsection 3. The subsection added provides for the calculation of the trust fund to be retained where the Minister has allowed a grant or tax credit as a result of the taxpayer's having acquired fully paid up shares or advanced money to the eligible small business prior to the reduction in the rate of the grant or tax credit.

SECTION 7.—Subsections 1 and 2. The amendments permit the investment by small business development corporations in corporate small businesses which are primarily engaged in the separate category of prescribed northern and eastern Ontario business activities, if at least 75 per cent of the wages and salaries paid by such small businesses are paid to employees working in northern and eastern Ontario and if the small business meets the other requirements prescribed. Clause 9 (1) (a) now reads as follows:

- (a) the investment is made in a small business and 75 per cent or more of the wages and salaries of the small business are paid in respect of operations in Ontario.*

Subclause 9 (1) (b) (iii) now reads as follows:

- (iii) any other prescribed business activity.*

Subsections 3 and 4. The amendments are consequential upon the enactment of the *Business Corporations Act, 1982* which removed the requirement for corporations to have corporate objects.

Subsection 5. The clause that is added provides that only investments within the geographical boundaries of northern and eastern Ontario are eligible investments for the purpose of the new Northern and Eastern small business development corporation.

SECTION 8. The re-enactment of subsection 12 (3) of the Act provides that a single shareholder may hold a higher proportion of the shares, 20 per cent, in a Northern and Eastern small business development corporation than a single shareholder is permitted to hold in other small business development corporations and that there may be fewer shareholders involved in a Northern and Eastern small business development corporation. Subsection 12 (3) now reads as follows:

(3) For the purposes of this section,

- (a) "major shareholder" means a person who holds 10 per cent or more of the voting rights attached to all equity shares of the small business development corporation for the time being outstanding; and*
- (b) a small business development corporation is widely held if the corporation has ten or more shareholders, each holding not more than 10 per cent of the issued and outstanding equity shares of the corporation and none of the shareholders are associates or affiliated corporations.*

SECTION 9. The re-enactment of section 15 and the repeal of section 16 continue the existing provisions of sections 15 and 16 and are consequential upon the enactment of the *Business Corporations Act, 1982*. Sections 15 and 16 now read as follows:

15. Notwithstanding the provisions of section 160 of the Business Corporations Act, every small business development corporation shall comply with the provisions of sections 161 and 162, subsections 163 (1) to (3), and section 164 and clause 165 (1) (c) and subsection 165 (3) of that Act in each year.

16. Within six months of the date to which it is made up, a small business development corporation shall file with the Minister its financial statements and the auditor's report thereon.

SECTION 10. The re-enactment of subsection 17 (2) is consequential upon the enactment of the *Business Corporations Act, 1982* which permits a corporation to reduce the stated capital account of a class or series of shares in circumstances other than by way of a purchase, surrender, redemption or conversion of issued shares, and has the effect of requiring the small business development corporation to notify the Minister of Revenue of any proposed reduction of its stated capital accounts whether or not effected by way of the purchase, surrender, redemption or conversion of issued equity shares. The amendment also enlarges the categories of corporate action of which prior notice is to be given to the Minister of Revenue to include proposals made by a small business development corporation to its shareholders for arrangements under section 181 of the *Business Corporations Act, 1982* and the entering into or amendment of any shareholder agreement which relates to the small business development corporation or any corporation in which the small business development corporation maintains an investment. Subsection 17 (2) now reads as follows:

(2) A small business development corporation shall notify the Minister in the prescribed form, of any action involving,

- (a) the proposed amendment of its articles of incorporation;*
- (b) the purchase, surrender, redemption or conversion of any equity share of the corporation;*
- (c) the disposition or sale of any eligible investment; or*
- (d) the winding up or dissolution of the corporation,*

at least twenty-one days prior to carrying out the proposed action.

SECTION 11.—Subsection 1. The re-enactment of subsection 21 (1) provides for the payment of grants at the new rates of 30 per cent for a Northern and Eastern small business development corporation and 25 per cent for other small business development corporations. Subsection 21 (1) now reads as follows:

(1) Subject to subsections (2) and (3), a person who is the beneficial and registered owner of equity shares of a small business development corporation may make an application in the form prescribed by the Minister for a grant and the Minister may pay a grant equal to 30 per cent of the amount of money actually paid by the applicant to the small business development corporation for equity shares issued to him by the corporation.

Subsection 2. The subsections added provide a transitional provision that will allow an applicant to receive grants at the 30 per cent rate where fully paid shares were issued to the applicant or where the applicant advanced moneys to the eligible small business with the Minister's approval prior to Budget day.

SECTION 12.—Subsection 1. The re-enactment of subsection 22 (1) provides for the allowance of tax credits at the new rates of 30 per cent for a Northern and Eastern small business development corporation and 25 per cent for other small business development corporations. Subsection 22 (1) now reads as follows:

(1) Subject to subsection (2), a corporation that is the beneficial and registered owner of equity shares of a small business development corporation may, subject to the approval of the Minister, deduct from the tax otherwise payable by it under Part II of the Corporations Tax Act, an amount equal to 30 per cent of the amount of money actually paid by the corporation to the small business development corporation for equity shares issued to it by the corporation.

Subsection 2. The subsections added provide a transitional provision that will allow an applicant to receive tax credits at the 30 per cent rate where fully paid shares were issued to it or where it advanced moneys to the eligible small business with the Minister's approval prior to Budget day.

SECTION 13. The re-enactment of subsections 22a (3) and (4) provides that a grant or tax credit paid with respect to an equity share in a Northern and Eastern small business development corporation is paid or allowed from the northern and eastern Ontario incentive fund; other small business development corporations may elect only between the general fund and the new enterprise incentive fund. Subsections 22a (3) and (4) now read as follows:

(3) Prior to the Minister making a grant or allowing a tax credit to a shareholder of a small business development corporation in respect of equity shares issued after the 15th day of May, 1984, the small business development corporation shall file an election in the prescribed form designating, with respect to each such equity share, the fund described in subsection (1) from which a grant or tax credit is to be paid or allowed to the holder of such equity share.

(4) The Minister shall make a grant or allow a tax credit to a shareholder of the small business development corporation with respect to each equity share issued after the 15th day of May, 1984, only from the fund designated by the small business development corporation in the election filed under subsection (3).

SECTION 14. The re-enactment of paragraphs 1, 2, 3 and 4 of section 24 and the enactment of new paragraphs 4, 5, 6, 7, 8 and 9 clarify the current provisions with respect to the determination of when an amount is payable to the Minister by the small business development corporation as a recovery by the Minister of the grants paid and tax credits allowed to shareholders of the small business development corporation and the calculation of the amount, if any, payable. Paragraphs 1, 2, 3 and 4 of section 24 now read as follows:

1. Where an equity share of the small business development corporation is purchased or otherwise acquired by it for a total consideration equal to or greater than that for which the share was issued, the small business development corporation shall pay to the Minister an amount of money equal to 30 per cent of the consideration paid to the corporation by the shareholder for the share at the time the share was issued.
2. Where an equity share of the small business development corporation is purchased or otherwise acquired by it for a total consideration that is less than that for which the share was issued, the small business development corporation shall pay to the Minister an amount equal to 30 per cent of the gross consideration paid by the corporation for the purchase or acquisition of the share.
3. Where the registration of a small business development corporation is revoked or where the corporation proposes to wind up or dissolve, it shall pay to the Minister an amount of money equal to 30 per cent of the value of all of its shareholders' equity to an amount not exceeding the aggregate of the grants or tax credits made or allowed by the Minister in respect of all equity shares then issued and outstanding at the time of revocation, winding up or dissolution, calculated in the prescribed manner.
4. Where the corporation proposes to wind up or dissolve or where the registration of a small business development corporation is revoked for failure to comply with subsection 7 (1) or (2), it shall pay to the Minister, in addition to the amount set out under paragraph 3, an amount equal to the interest earned on all moneys paid into the trust fund established by the corporation under section 8 and not paid out in accordance with subsection (2) of that section from the date of registration of the corporation under this Act.

Bill 44

1986

**An Act to amend the
Small Business Development Corporations Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Clause 1 (1) (b) of the *Small Business Development Corporations Act*, being chapter 475 of the Revised Statutes of Ontario, 1980, is amended by striking out “*Business Corporations Act*” in the second and third lines and inserting in lieu thereof “*Business Corporations Act, 1982*”.

(2) Clause 1 (1) (f) of the said Act is repealed and the following substituted therefor:

- (f) “equity share” means a share of any class or series of shares of a corporation carrying a voting right either under all circumstances or under circumstances that have occurred and are continuing, other than a share of a class or series that must vote separately by reason of a statutory requirement.

(3) Clause 1 (1) (m) of the said Act is amended by inserting after “class” in the first line “or series”.

(4) Subsection 1 (1) of the said Act, as amended by the Statutes of Ontario, 1984, chapter 30, section 1, is further amended by adding thereto the following clauses:

- (ha) “Northern and Eastern small business development corporation” means a small business development corporation that may make investments only in small businesses that are primarily located within the geographic boundaries of northern and eastern Ontario as defined in the regulations;
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1982, c. 4

- (q) “stated capital” and “stated capital account” have the same meaning as “stated capital” and “stated capital account” in the *Business Corporations Act, 1982*.

2.—(1) Subsection 3 (1) of the said Act is amended by striking out “*Business Corporations Act*” in the first and second lines and inserting in lieu thereof “*Business Corporations Act, 1982* or any predecessor Act”.

(2) Paragraph 2 of subsection 3 (2) of the said Act is amended by striking out “head office” in the first line and inserting in lieu thereof “registered office”.

(3) Paragraphs 3 and 4 of subsection 3 (2) of the said Act are repealed and the following substituted therefor:

3. The classes and series of shares, the maximum number of shares that the corporation is authorized to issue of each class and series and the aggregate consideration exceeding which all shares of each class and series may not be issued.
4. The amount of the stated capital account of each class and series of shares issued and the amount of equity capital for which the shares were issued.

(4) Subsection 3 (3) of the said Act is amended by adding at the end thereof “and a true copy of any shareholder agreement relating to the corporation”.

(5) Subsection 3 (4) of the said Act is amended by striking out “executed under the seal of the corporation and” in the first and second lines.

3. Clause 4 (c) of the said Act, as re-enacted by the Statutes of Ontario, 1981, chapter 35, section 2, and clauses 4 (d) and (e) of the said Act are repealed and the following substituted therefor:

- (c) the articles of the corporation limit the aggregate consideration which the corporation may receive on the issuance of classes and series of equity shares to not more than,
 - (i) \$10,000,000 in the case of a corporation that is offering its equity shares to the public, and
 - (ii) \$5,000,000 in the case of any other corporation;

- (d) the articles of the corporation restrict the business of the corporation to assisting in the development of small businesses by,
 - (i) providing capital through the acquisition and holding of securities as permitted by this Act,
 - (ii) providing business and managerial expertise to small businesses, or
 - (iii) in the case of a Northern and Eastern small business development corporation, by providing the assistance described in subclauses (i) and (ii) to small businesses which meet the requirements of clause 9 (1) (a);
- (da) in the case of a Northern and Eastern small business development corporation, the corporation has included in its name “(Northern and Eastern)” or provides an undertaking satisfactory to the Minister at the time of registration to file articles of amendment changing its name to include that designation and to provide the Minister with a certified copy of the articles of amendment;
- (e) the total stated capital for classes and series of equity shares issued in consideration for equity capital is at least \$25,000; and

4. Section 5 of the said Act, as amended by the Statutes of Ontario, 1984, chapter 30, section 2, is further amended by adding thereto the following subsections:

- (4) Upon the request of a corporation registered under this Act, the Minister may accept the surrender of the registration of the corporation if,
 - (a) the corporation pays to the Minister the amount, if any, required to be paid under section 24; and
 - (b) the corporation files with the Minister the prescribed information and meets such other conditions as may be prescribed.

Surrender of
registration

Corporation
deemed
registered as
Northern and
Eastern
development
corporation

(5) Where a small business development corporation that was registered prior to the 24th day of October, 1985 has,

- (a) made investments only in small businesses primarily located within the geographic boundaries of northern and eastern Ontario as defined in the regulations;
- (b) met the requirements of clause 4 (da); and
- (c) complied fully with the Act, the spirit and intent of the Act and the regulations,

the Minister may, at the corporation's request, deem the corporation to be registered as a Northern and Eastern small business development corporation and amend the register accordingly.

5.—(1) Subsection 7 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 30, section 3, is repealed and the following substituted therefor:

Capital
requirements

(1) By the end of its first year of registration under this Act and at all times thereafter, a small business development corporation shall have equity shares issued and outstanding for equity capital of,

- (a) at least \$50,000 where the small business development corporation is a Northern and Eastern small business development corporation; or
- (b) at least \$100,000 where the small business development corporation is not a Northern and Eastern small business development corporation,

but not exceeding \$10,000,000 where the small business development corporation is offering its equity shares to the public and \$5,000,000 in the case of any other small business development corporation.

(2) Subsection 7 (4) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 30, section 3, is repealed and the following substituted therefor:

Idem

(4) Where a grant or tax credit with respect to any equity share has been paid or allowed out of an incentive fund referred to in clause 22a (1) (a) or (b), each eligible investment referred to in subsections (2) and (3) shall have been made after the 15th day of May, 1984, and shall meet the prescribed conditions of being an eligible investment,

- (a) where the small business development corporation is a Northern and Eastern small business development corporation, in a small business primarily located in northern and eastern Ontario where the grant or tax credit was paid or allowed out of the northern and eastern Ontario incentive fund; and
- (b) where the small business development corporation is not a Northern and Eastern small business development corporation,
 - (i) in a small business primarily located in northern and eastern Ontario where the grant or tax credit was paid or allowed out of the northern and eastern Ontario incentive fund prior to the 24th day of October, 1985, or
 - (ii) in a new enterprise, if the grant or tax credit was paid or allowed out of the new enterprise incentive fund.

6.—(1) Subsections 8 (1) and (2) of the said Act are repealed and the following substituted therefor:

(1) A small business development corporation shall set aside in a trust fund an amount of money,

- (a) equal to 30 per cent of all amounts received by it as equity capital where the small business development corporation is a Northern and Eastern small business development corporation; or
- (b) equal to 25 per cent of all amounts received by it as equity capital where the small business development corporation is not a Northern and Eastern small business development corporation,

and such trust fund shall be held by a trustee on behalf of the corporation in trust for the corporation and for the Crown jointly to be dealt with in accordance with this section.

(2) Subject to subsection (3), while any amount is held in trust under subsection (1), the Minister shall permit payment from the fund of an amount equal to,

- (a) .4286 of the purchase price paid by the small business development corporation to acquire an eligible investment where the shares of the small business development corporation were issued and fully paid for prior to the 24th day of October, 1985 or where

Trust fund

Payment out
of trust fund

the small business development corporation is a Northern and Eastern small business development corporation; or

- (b) .3572 of the purchase price paid by the small business development corporation to acquire an eligible investment where the small business development corporation is not a Northern and Eastern small business development corporation and the shares of the small business development corporation were not issued and fully paid for prior to the 24th day of October, 1985,

provided that the Minister is satisfied that the purchase price of such eligible investment has been paid in full in money or that the amount to be permitted to be paid out by the Minister will be used by the corporation in payment of the purchase price of the eligible investment.

(2) Subsection 8 (4) of the said Act is amended by striking out "paragraph 4" in the first line and inserting in lieu thereof "paragraph 5".

(3) Section 8 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 26, section 2, is further amended by adding thereto the following subsection:

Calculation
of trust fund

(7) Notwithstanding subsections (1) and (2), where the Minister has paid a grant pursuant to subsection 21 (8) or allowed a tax credit pursuant to subsection 22 (3), or where an applicant is deemed to have made an investment in equity shares of a small business development corporation pursuant to subsection 21 (9) or 22 (4), a small business development corporation shall set aside an amount of money equal to 30 per cent of all amounts received by it as equity capital prior to the 24th day of October, 1985, and the Minister shall permit payment from the fund in accordance with clause (2) (b).

7.—(1) Clause 9 (1) (a) of the said Act is repealed and the following substituted therefor:

- (a) the investment is made in a small business and 75 per cent or more of the wages and salaries are paid by the small business,
- (i) to employees whose ordinary place of employment is a permanent establishment of the small business located in northern or eastern Ontario where the small business development corporation making the investment is a

Northern and Eastern small business development corporation, and

- (ii) in respect of operations in Ontario where the small business development corporation making the investment is not a Northern and Eastern small business development corporation.

(2) Subclause 9 (1) (b) (iii) of the said Act is repealed and the following substituted therefor:

- (iii) any other business activity that may be prescribed with respect to investment in a business located in northern or eastern Ontario by a Northern and Eastern small business development corporation where the small business development corporation making the investment is a Northern and Eastern small business development corporation, or

- (iv) any other prescribed business activity.

(3) Subclause 9 (1) (d) (ii) of the said Act, as amended by the Statutes of Ontario, 1981, chapter 35, section 4, is further amended by striking out “principal objects of the small business” in the second and third lines and inserting in lieu thereof “prescribed manufacturing and processing, prescribed tourist activities, business activities prescribed with respect to investment in a business located in northern or eastern Ontario by a Northern and Eastern small business development corporation or other prescribed business activity or activities in which the small business is primarily engaged”.

(4) Subclause 9 (1) (d) (v) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 30, section 4, is repealed and the following substituted therefor:

- (v) any prescribed purpose or use.

(5) Subsection 9 (1) of the said Act, as amended by the Statutes of Ontario, 1981, chapter 35, section 4 and 1984, chapter 30, section 4, is further amended by adding thereto the following clause:

- (fa) the investment is made in a small business primarily located within the geographical boundaries prescribed by the regulations where the investment is

made by a Northern and Eastern small business development corporation; and

8. Subsection 12 (3) of the said Act is repealed and the following substituted therefor:

Interpretation

(3) For the purposes of this section,

(a) “major shareholder” means a person who holds,

(i) 20 per cent where the small business development corporation is a Northern and Eastern small business development corporation, or

(ii) 10 per cent where the small business development corporation is not a Northern and Eastern small business development corporation,

or more of the voting rights attached to all equity shares of the small business development corporation from time to time outstanding;

(b) a small business development corporation is widely held if the corporation has,

(i) five or more shareholders, each holding not more than 20 per cent of the issued and outstanding shares of the corporation, where the small business development corporation is a Northern and Eastern small business development corporation, or

(ii) ten or more shareholders, each holding not more than 10 per cent of the issued and outstanding equity shares of the corporation, where the small business development corporation is not a Northern and Eastern small business development corporation,

and none of the shareholders is an associate or affiliated corporation; and

(c) where the small business development corporation is a Northern and Eastern small business development corporation, “associate” means, in addition to those definitions set out in subclauses 1 (1) (a) (ii) to (viii), any corporation of which such person beneficially owns directly or indirectly equity shares

carrying more than 20 per cent of the voting rights attached to all equity shares of the corporation for the time being outstanding.

9. Sections 15 and 16 of the said Act are repealed and the following substituted therefor:

15. Notwithstanding section 148 of the *Business Corporations Act, 1982*, every corporation in respect of a financial year or any part thereof during which the corporation was registered under this Act shall comply with the requirements of Part XII of the *Business Corporations Act, 1982* regarding the appointment and duties of an auditor and the corporation shall submit to the Minister within six months after the end of each financial year its financial statements for the year and the auditor's report thereon.

Application
of
1982, c. 4,
Pt. XII

10. Subsection 17 (2) of the said Act, as amended by the Statutes of Ontario, 1981, chapter 35, section 6, is repealed and the following substituted therefor:

(2) A small business development corporation shall notify the Minister, in the prescribed form, of any proposed action involving,

Notice to
Minister

- (a) any arrangement under section 181 of the *Business Corporations Act, 1982* that it proposes to place before its shareholders for approval;
- (b) any action by the corporation which would have the effect of reducing the stated capital account of any class or series of equity shares;
- (c) the purchase, surrender, redemption or conversion of any equity share of the corporation;
- (d) the disposition or sale of any eligible investment; or
- (e) the entering into, or amendment of, any shareholder agreement relating to the small business development corporation or any corporation in which the small business development corporation maintains an investment,

1982, c. 4

at least twenty-one days prior to carrying out the proposed action.

11.—(1) Subsection 21 (1) of the said Act is repealed and the following substituted therefor:

Payment
of grant

(1) Subject to subsections (2) and (3), a person who is the beneficial and registered owner of equity shares of a small business development corporation may make an application in the form prescribed by the Minister for a grant and the Minister may pay a grant equal to,

- (a) 30 per cent in the case of shares of a Northern and Eastern small business development corporation; or
- (b) 25 per cent in the case of shares of a small business development corporation that is not a Northern and Eastern small business development corporation,

of the amount of money actually paid by the applicant to the small business development corporation for equity shares issued to the applicant by that corporation.

(2) The said section 21, as amended by the Statutes of Ontario, 1983, chapter 26, section 6, is further amended by adding thereto the following subsections:

Transitional

(8) Notwithstanding subsection (1), the Minister may pay a grant equal to 30 per cent of the amount of money actually paid by the applicant to the small business development corporation for equity shares where the Minister is satisfied that the shares were fully paid for and issued to the applicant by the small business development corporation prior to the 24th day of October, 1985.

Idem

(9) Where, prior to the 24th day of October, 1985,

- (a) the Minister has consented in writing to the repayment of any advance owing to a shareholder of a small business development corporation in accordance with provisions prescribed under subclause 9 (1) (d) (v); and
- (b) a substantial portion of the advance approved by the Minister has been made,

an application for a grant under subsection (1) shall be treated as if an investment equal to the full amount of the advance approved by the Minister was paid by the applicant to the small business development corporation for equity shares that were fully paid for and issued to the applicant prior to the 24th day of October, 1985.

12.—(1) Subsection 22 (1) of the said Act is repealed and the following substituted therefor:

(1) Subject to subsection (2), a corporation that is the beneficial and registered owner of equity shares of a small business development corporation may, subject to the approval of the Minister, deduct from the tax otherwise payable by it under Part II of the *Corporations Tax Act*, an amount equal to,

Tax credit

R.S.O. 1980,
c. 97

- (a) 30 per cent in the case of shares of a Northern and Eastern small business development corporation; or
- (b) 25 per cent in the case of shares of a small business development corporation that is not a Northern and Eastern small business development corporation,

of the amount of money actually paid by the corporation to the small business development corporation for equity shares issued to it by the corporation.

(2) The said section 22 is amended by adding thereto the following subsections:

(3) Notwithstanding subsection (1), the Minister may approve the deduction by a corporation from the tax otherwise payable by it under Part II of the *Corporations Tax Act* of an amount equal to 30 per cent of the amount of money actually paid by the corporation to the small business development corporation for equity shares where the Minister is satisfied that such shares were fully paid for and issued to the corporation by the small business development corporation prior to the 24th day of October, 1985.

Transitional

R.S.O. 1980,
c. 97

(4) Where, prior to the 24th day of October, 1985,

Idem

- (a) the Minister has consented in writing to the repayment of any advance owing to a shareholder of a small business development corporation in accordance with provisions prescribed under subclause 9 (1) (d) (v); and
- (b) a substantial portion of the advance approved by the Minister has been made,

an application for a tax credit under subsection (1) shall be treated as if an investment equal to the full amount of the advance approved by the Minister was paid by the applicant to the small business development corporation for equity shares that were fully paid for and issued to the applicant prior to the 24th day of October, 1985.

13. Subsections 22a (3) and (4) of the said Act, as enacted by the Statutes of Ontario, 1984, chapter 30, section 8, are repealed and the following substituted therefor:

Incentive
fund election

(3) Before the Minister makes a grant or allows a tax credit to a shareholder of a small business development corporation that is not a Northern and Eastern small business development corporation in respect of equity shares issued on or after the 24th day of October, 1985, the small business development corporation shall file an election in the prescribed form designating, with respect to each such equity share, the fund described in clause (1) (b) or (c) from which a grant or tax credit is to be paid or allowed to the holder of such equity share.

Payment
from funds

(4) The Minister shall make a grant or allow a credit to a shareholder of a small business development corporation with respect to each equity share issued on or after the 24th day of October, 1985,

- (a) from the fund described in clause (1) (a), where the small business development corporation that issued the share is a Northern and Eastern small business development corporation; or
- (b) from the fund designated by the small business development corporation in the election filed under subsection (3) where the small business development corporation that issued the share is not a Northern and Eastern small business development corporation.

14. Paragraphs 1, 2, 3 and 4 of section 24 of the said Act are repealed and the following substituted therefor:

1. Where an equity share of the small business development corporation is purchased or otherwise acquired by the small business development corporation for a total consideration equal to or greater than that for which the share was issued, the small business development corporation shall pay to the Minister an amount equal to,
 - (a) in the case of an equity share of a small business development corporation issued and fully paid for prior to the 24th day of October, 1985,
 - (i) 30 per cent where, at the time of purchase or acquisition, the small business

development corporation does not maintain at least 70 per cent of its assets in the form of eligible investments or is not complying fully with the Act, the spirit and intent of the Act or the regulations, or

- (ii) 25 per cent where, at the time of purchase or acquisition, the small business development corporation is maintaining at least 70 per cent of its assets in the form of eligible investments and is complying fully with the Act, the spirit and intent of the Act and the regulations,

of the consideration paid to the corporation by the shareholder for the share at the time it was issued; or

- (b) in the case of an equity share of a small business development corporation issued and paid for on or after the 24th day of October, 1985, an amount equal to,

- (i) 30 per cent where the share is a share of a Northern and Eastern small business development corporation, or

- (ii) 25 per cent where the share is a share of a small business development corporation that is not a Northern and Eastern small business development corporation,

of the consideration paid to the corporation by the shareholder for the share at the time the share was issued.

- 2. Where an equity share of the small business development corporation is purchased or otherwise acquired by the small business development corporation for a total consideration that is less than that for which the share was issued, the small business development corporation shall pay to the Minister,

- (a) in the case of an equity share of a small business development corporation issued and fully paid for prior to the 24th day of October, 1985, an amount of money equal to,

- (i) .4286 where, at the time of purchase or acquisition, the small business development corporation does not maintain at least 70 per cent of its assets in the form of eligible investments or is not complying fully with the Act, the spirit and intent of the Act or the regulations, or
- (ii) .3572 where, at the time of purchase or acquisition, the small business development corporation is maintaining at least 70 per cent of its assets in the form of eligible investments and is complying fully with the Act, the spirit and intent of the Act and the regulations,

of the gross consideration paid by the corporation for the purchase or acquisition of the share; or

- (b) in the case of an equity share of a small business development corporation issued and paid for on or after the 24th day of October, 1985, an amount equal to,
 - (i) .4286 where the share is a share of a Northern and Eastern small business development corporation, or
 - (ii) .3572 where the share is a share of a small business development corporation that is not a Northern and Eastern small business development corporation,

of the gross consideration paid by the corporation for the purchase or acquisition of the share.

- 3. Where the registration of a small business development corporation is revoked or where the corporation proposes to wind up or dissolve, it shall pay the Minister,
 - (a) in the case of a small business development corporation registered prior to the 24th day of October, 1985,
 - (i) where, at the time of the revocation, winding up or dissolution, the small business development corporation is not

maintaining 70 per cent of its assets in the form of eligible investments or is not complying with the Act, the spirit and intent of the Act and the regulations, an amount equal to,

- (A) 30 per cent of the value of all of the small business development corporation's shareholders' equity to an amount not exceeding the aggregate of the grants or tax credits made or allowed by the Minister in respect of all shares issued and outstanding prior to the 24th day of October, 1985,
- (B) 25 per cent of the value of all of the small business development corporation's shareholders' equity to an amount not exceeding the aggregate of the grants or tax credits made or allowed by the Minister in respect of all equity shares issued on or after the 24th day of October, 1985,

and outstanding at the time of revocation, winding up or dissolution, calculated in the manner prescribed, or

- (ii) 25 per cent of the value of all the small business development corporation's shareholders' equity to an amount not exceeding the aggregate of the grants or tax credits made or allowed by the Minister in respect of all equity shares issued and outstanding at the time of the revocation, winding up or dissolution, calculated in the manner prescribed, where, at the time of the revocation, winding up or dissolution, the small business development corporation is maintaining 70 per cent of its assets in the form of eligible investments and is complying with the Act, the spirit and intent of the Act and the regulations;
- (b) in the case of a small business development corporation registered after the 24th day of October, 1985, an amount equal to,

- (i) 30 per cent where the share is a share of a Northern and Eastern small business development corporation, or
- (ii) 25 per cent where the share is a share of a small business development corporation that is not a Northern and Eastern small business development corporation,

of the value of all of the small business development corporation's shareholders' equity to an amount not exceeding the aggregate of the grants or tax credits made or allowed by the Minister in respect of all equity shares issued and outstanding at the time of revocation, winding up or dissolution calculated in the manner prescribed.

- 4. Subject to paragraph 6, where a small business development corporation reduces by any other means the stated capital account of any class or series of equity shares, the small business development corporation shall pay to the Minister,
 - (a) in the case of a reduction of stated capital with respect to shares issued prior to the 24th day of October, 1985, an amount equal to the lesser of the aggregate of the grants and tax credits made or allowed by the Minister in respect of all equity shares previously issued by the small business development corporation less any amounts previously paid to the Minister under this section and either,
 - (i) 30 per cent of the amount of the reduction to the stated capital accounts where, at the time of the reduction of stated capital, the small business development corporation does not maintain at least 70 per cent of its assets in the form of eligible investments or is not complying fully with the Act, the spirit and intent of the Act or the regulations, or
 - (ii) 25 per cent of the amount of the reduction to the stated capital accounts where, at the time of the reduction of stated capital, the small business development corporation is maintaining at least 70 per cent of its assets in the form of eligible

investments and is complying fully with the Act, the spirit and intent of the Act and the regulations;

- (b) in the case of a reduction of stated capital with respect to shares issued on or after the 24th day of October, 1985, an amount of money equal to the lesser of the aggregate of the grants and tax credits made or allowed by the Minister in respect of all equity shares previously issued by the small business development corporation less any amounts previously paid to the Minister under this subsection and either,
 - (i) 30 per cent of the amount of the reduction to the stated capital accounts where the share is a share of a Northern and Eastern small business development corporation, or
 - (ii) 25 per cent of the amount of the reduction to the stated capital accounts where the share is a share of a small business development corporation that is not a Northern and Eastern small business development corporation.
- 5. Where a small business development corporation proposes to wind up or dissolve or where the registration of the small business development corporation is revoked or its registration is surrendered, the small business development corporation shall immediately pay to the Minister an amount of money, in addition to any other amount under this section, equal to the interest earned on all moneys paid into the trust account established by the small business development corporation under section 8 and not paid out in accordance with subsection 8 (2) or (2a) from the date of registration of the corporation under this Act.
- 6. No amount is payable to the Minister if the reduction to stated capital does not exceed real and unrealized losses associated with assets permitted to be held under section 10 and no reduction in stated capital has been made previously in respect of such losses.

7. For the purposes of this section, the amount to be paid by the small business development corporation to the Minister shall be calculated only with reference to equity shares on which a grant has been paid or a credit has been allowed under the Act and in respect of which no amount has been paid to the Crown pursuant to section 32.
8. For the purposes of this section, "shareholders' equity" means the aggregate of,
 - (a) the stated capital of all classes and series of equity shares;
 - (b) the retained earnings or deficit of the small business development corporation as adjusted to exclude,
 - (i) any prior losses from investments in assets not permitted under the Act,
 - (ii) any prior losses from activities not authorized by the articles of incorporation,
 - (iii) an amount equal to any prior profits less prior dividends paid and payable, to the extent that such amount does not exceed the amount of any prior losses from investments in assets permitted under section 10,
 - (iv) the amount of any prior dividends paid or dividends payable which have rendered or will render the small business development corporation insolvent within the meaning of the *Business Corporations Act*, 1982 or which diminished or will diminish its capital, and
 - (v) expenses paid to an officer, director, shareholder or associate of the small business development corporation, or to an associate of any such officer, director or shareholder, to the extent that such expenses are, in the opinion of the Minister, unreasonable; and
 - (c) such other amounts as may be prescribed.

9. A small business development corporation shall be deemed to have disposed of all its assets at fair market value immediately prior to the revocation or surrender of its registration, its winding up or dissolution for the purpose of determining prior losses or prior profits under clause (b) of paragraph 8.



15.—(1) This Act, except sections 6, 11 and 12, comes into force on the day following the day it receives Royal Assent. Commence-
ment

(2) Sections 6, 11 and 12 shall be deemed to have come into force on the 24th day of October, 1985. Idem



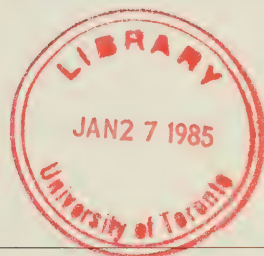
16. The short title of this Act is the *Small Business Development Corporations Amendment Act, 1986*. Short title

Bill 44

*(Chapter 3
Statutes of Ontario, 1986)*

An Act to amend the Small Business Development Corporations Act

The Hon. R. Nixon
Minister of Revenue



<i>1st Reading</i>	October 24th, 1985
<i>2nd Reading</i>	January 6th, 1986
<i>3rd Reading</i>	January 10th, 1986
<i>Royal Assent</i>	January 13th, 1986

Bill 44

1986

**An Act to amend the
Small Business Development Corporations Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Clause 1 (1) (b) of the *Small Business Development Corporations Act*, being chapter 475 of the Revised Statutes of Ontario, 1980, is amended by striking out “*Business Corporations Act*” in the second and third lines and inserting in lieu thereof “*Business Corporations Act, 1982*”.

(2) Clause 1 (1) (f) of the said Act is repealed and the following substituted therefor:

- (f) “equity share” means a share of any class or series of shares of a corporation carrying a voting right either under all circumstances or under circumstances that have occurred and are continuing, other than a share of a class or series that must vote separately by reason of a statutory requirement.

(3) Clause 1 (1) (m) of the said Act is amended by inserting after “class” in the first line “or series”.

(4) Subsection 1 (1) of the said Act, as amended by the Statutes of Ontario, 1984, chapter 30, section 1, is further amended by adding thereto the following clauses:

- (ha) “Northern and Eastern small business development corporation” means a small business development corporation that may make investments only in small businesses that are primarily located within the geographic boundaries of northern and eastern Ontario as defined in the regulations;
-

1982, c. 4

- (q) “stated capital” and “stated capital account” have the same meaning as “stated capital” and “stated capital account” in the *Business Corporations Act, 1982*.

2.—(1) Subsection 3 (1) of the said Act is amended by striking out “*Business Corporations Act*” in the first and second lines and inserting in lieu thereof “*Business Corporations Act, 1982* or any predecessor Act”.

(2) Paragraph 2 of subsection 3 (2) of the said Act is amended by striking out “head office” in the first line and inserting in lieu thereof “registered office”.

(3) Paragraphs 3 and 4 of subsection 3 (2) of the said Act are repealed and the following substituted therefor:

3. The classes and series of shares, the maximum number of shares that the corporation is authorized to issue of each class and series and the aggregate consideration exceeding which all shares of each class and series may not be issued.
4. The amount of the stated capital account of each class and series of shares issued and the amount of equity capital for which the shares were issued.

(4) Subsection 3 (3) of the said Act is amended by adding at the end thereof “and a true copy of any shareholder agreement relating to the corporation”.

(5) Subsection 3 (4) of the said Act is amended by striking out “executed under the seal of the corporation and” in the first and second lines.

3. Clause 4 (c) of the said Act, as re-enacted by the Statutes of Ontario, 1981, chapter 35, section 2, and clauses 4 (d) and (e) of the said Act are repealed and the following substituted therefor:

- (c) the articles of the corporation limit the aggregate consideration which the corporation may receive on the issuance of classes and series of equity shares to not more than,
 - (i) \$10,000,000 in the case of a corporation that is offering its equity shares to the public, and
 - (ii) \$5,000,000 in the case of any other corporation;

- (d) the articles of the corporation restrict the business of the corporation to assisting in the development of small businesses by,
 - (i) providing capital through the acquisition and holding of securities as permitted by this Act,
 - (ii) providing business and managerial expertise to small businesses, or
 - (iii) in the case of a Northern and Eastern small business development corporation, by providing the assistance described in subclauses (i) and (ii) to small businesses which meet the requirements of clause 9 (1) (a);
 - (da) in the case of a Northern and Eastern small business development corporation, the corporation has included in its name “(Northern and Eastern)” or provides an undertaking satisfactory to the Minister at the time of registration to file articles of amendment changing its name to include that designation and to provide the Minister with a certified copy of the articles of amendment;
 - (e) the total stated capital for classes and series of equity shares issued in consideration for equity capital is at least \$25,000; and
-

4. Section 5 of the said Act, as amended by the Statutes of Ontario, 1984, chapter 30, section 2, is further amended by adding thereto the following subsections:

- (4) Upon the request of a corporation registered under this Act, the Minister may accept the surrender of the registration of the corporation if, Surrender of
registration
- (a) the corporation pays to the Minister the amount, if any, required to be paid under section 24; and
 - (b) the corporation files with the Minister the prescribed information and meets such other conditions as may be prescribed.

Corporation
deemed
registered as
Northern and
Eastern
development
corporation

(5) Where a small business development corporation that was registered prior to the 24th day of October, 1985 has,

- (a) made investments only in small businesses primarily located within the geographic boundaries of northern and eastern Ontario as defined in the regulations;
- (b) met the requirements of clause 4 (da); and
- (c) complied fully with the Act, the spirit and intent of the Act and the regulations,

the Minister may, at the corporation's request, deem the corporation to be registered as a Northern and Eastern small business development corporation and amend the register accordingly.

5.—(1) Subsection 7 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 30, section 3, is repealed and the following substituted therefor:

Capital
requirements

(1) By the end of its first year of registration under this Act and at all times thereafter, a small business development corporation shall have equity shares issued and outstanding for equity capital of,

- (a) at least \$50,000 where the small business development corporation is a Northern and Eastern small business development corporation; or
- (b) at least \$100,000 where the small business development corporation is not a Northern and Eastern small business development corporation,

but not exceeding \$10,000,000 where the small business development corporation is offering its equity shares to the public and \$5,000,000 in the case of any other small business development corporation.

(2) Subsection 7 (4) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 30, section 3, is repealed and the following substituted therefor:

Idem

(4) Where a grant or tax credit with respect to any equity share has been paid or allowed out of an incentive fund referred to in clause 22a (1) (a) or (b), each eligible investment referred to in subsections (2) and (3) shall have been made after the 15th day of May, 1984, and shall meet the prescribed conditions of being an eligible investment,

- (a) where the small business development corporation is a Northern and Eastern small business development corporation, in a small business primarily located in northern and eastern Ontario where the grant or tax credit was paid or allowed out of the northern and eastern Ontario incentive fund; and
- (b) where the small business development corporation is not a Northern and Eastern small business development corporation,
 - (i) in a small business primarily located in northern and eastern Ontario where the grant or tax credit was paid or allowed out of the northern and eastern Ontario incentive fund prior to the 24th day of October, 1985, or
 - (ii) in a new enterprise, if the grant or tax credit was paid or allowed out of the new enterprise incentive fund.

6.—(1) Subsections 8 (1) and (2) of the said Act are repealed and the following substituted therefor:

(1) A small business development corporation shall set aside in a trust fund an amount of money, Trust fund

- (a) equal to 30 per cent of all amounts received by it as equity capital where the small business development corporation is a Northern and Eastern small business development corporation; or
- (b) equal to 25 per cent of all amounts received by it as equity capital where the small business development corporation is not a Northern and Eastern small business development corporation,

and such trust fund shall be held by a trustee on behalf of the corporation in trust for the corporation and for the Crown jointly to be dealt with in accordance with this section.

(2) Subject to subsection (3), while any amount is held in trust under subsection (1), the Minister shall permit payment from the fund of an amount equal to, Payment out of trust fund

- (a) .4286 of the purchase price paid by the small business development corporation to acquire an eligible investment where the shares of the small business development corporation were issued and fully paid for prior to the 24th day of October, 1985 or where

the small business development corporation is a Northern and Eastern small business development corporation; or

- (b) .3572 of the purchase price paid by the small business development corporation to acquire an eligible investment where the small business development corporation is not a Northern and Eastern small business development corporation and the shares of the small business development corporation were not issued and fully paid for prior to the 24th day of October, 1985,

provided that the Minister is satisfied that the purchase price of such eligible investment has been paid in full in money or that the amount to be permitted to be paid out by the Minister will be used by the corporation in payment of the purchase price of the eligible investment.

(2) Subsection 8 (4) of the said Act is amended by striking out “paragraph 4” in the first line and inserting in lieu thereof “paragraph 5”.

(3) Section 8 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 26, section 2, is further amended by adding thereto the following subsection:

Calculation
of trust fund

(7) Notwithstanding subsections (1) and (2), where the Minister has paid a grant pursuant to subsection 21 (8) or allowed a tax credit pursuant to subsection 22 (3), or where an applicant is deemed to have made an investment in equity shares of a small business development corporation pursuant to subsection 21 (9) or 22 (4), a small business development corporation shall set aside an amount of money equal to 30 per cent of all amounts received by it as equity capital prior to the 24th day of October, 1985, and the Minister shall permit payment from the fund in accordance with clause (2) (b).

7.—(1) Clause 9 (1) (a) of the said Act is repealed and the following substituted therefor:

- (a) the investment is made in a small business and 75 per cent or more of the wages and salaries are paid by the small business,
 - (i) to employees whose ordinary place of employment is a permanent establishment of the small business located in northern or eastern Ontario where the small business development corporation making the investment is a

Northern and Eastern small business development corporation, and

- (ii) in respect of operations in Ontario where the small business development corporation making the investment is not a Northern and Eastern small business development corporation.

(2) Subclause 9 (1) (b) (iii) of the said Act is repealed and the following substituted therefor:

- (iii) any other business activity that may be prescribed with respect to investment in a business located in northern or eastern Ontario by a Northern and Eastern small business development corporation where the small business development corporation making the investment is a Northern and Eastern small business development corporation, or
- (iv) any other prescribed business activity.

(3) Subclause 9 (1) (d) (ii) of the said Act, as amended by the Statutes of Ontario, 1981, chapter 35, section 4, is further amended by striking out “principal objects of the small business” in the second and third lines and inserting in lieu thereof “prescribed manufacturing and processing, prescribed tourist activities, business activities prescribed with respect to investment in a business located in northern or eastern Ontario by a Northern and Eastern small business development corporation or other prescribed business activity or activities in which the small business is primarily engaged”.

(4) Subclause 9 (1) (d) (v) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 30, section 4, is repealed and the following substituted therefor:

- (v) any prescribed purpose or use.

(5) Subsection 9 (1) of the said Act, as amended by the Statutes of Ontario, 1981, chapter 35, section 4 and 1984, chapter 30, section 4, is further amended by adding thereto the following clause:

- (fa) the investment is made in a small business primarily located within the geographical boundaries prescribed by the regulations where the investment is

made by a Northern and Eastern small business development corporation; and

8. Subsection 12 (3) of the said Act is repealed and the following substituted therefor:

Interpretation

(3) For the purposes of this section,

(a) “major shareholder” means a person who holds,

(i) 20 per cent where the small business development corporation is a Northern and Eastern small business development corporation, or

(ii) 10 per cent where the small business development corporation is not a Northern and Eastern small business development corporation,

or more of the voting rights attached to all equity shares of the small business development corporation from time to time outstanding;

(b) a small business development corporation is widely held if the corporation has,

(i) five or more shareholders, each holding not more than 20 per cent of the issued and outstanding shares of the corporation, where the small business development corporation is a Northern and Eastern small business development corporation, or

(ii) ten or more shareholders, each holding not more than 10 per cent of the issued and outstanding equity shares of the corporation, where the small business development corporation is not a Northern and Eastern small business development corporation,

and none of the shareholders is an associate or affiliated corporation; and

(c) where the small business development corporation is a Northern and Eastern small business development corporation, “associate” means, in addition to those definitions set out in subclauses 1 (1) (a) (ii) to (viii), any corporation of which such person beneficially owns directly or indirectly equity shares

carrying more than 20 per cent of the voting rights attached to all equity shares of the corporation for the time being outstanding.

9. Sections 15 and 16 of the said Act are repealed and the following substituted therefor:

15. Notwithstanding section 148 of the *Business Corporations Act, 1982*, every corporation in respect of a financial year or any part thereof during which the corporation was registered under this Act shall comply with the requirements of Part XII of the *Business Corporations Act, 1982* regarding the appointment and duties of an auditor and the corporation shall submit to the Minister within six months after the end of each financial year its financial statements for the year and the auditor's report thereon.

Application
of
1982, c. 4,
Pt. XII

10. Subsection 17 (2) of the said Act, as amended by the Statutes of Ontario, 1981, chapter 35, section 6, is repealed and the following substituted therefor:

(2) A small business development corporation shall notify the Minister, in the prescribed form, of any proposed action involving,

Notice to
Minister

- (a) any arrangement under section 181 of the *Business Corporations Act, 1982* that it proposes to place before its shareholders for approval;
- (b) any action by the corporation which would have the effect of reducing the stated capital account of any class or series of equity shares;
- (c) the purchase, surrender, redemption or conversion of any equity share of the corporation;
- (d) the disposition or sale of any eligible investment; or
- (e) the entering into, or amendment of, any shareholder agreement relating to the small business development corporation or any corporation in which the small business development corporation maintains an investment,

1982, c. 4

at least twenty-one days prior to carrying out the proposed action.

11.—(1) Subsection 21 (1) of the said Act is repealed and the following substituted therefor:

Payment
of grant

(1) Subject to subsections (2) and (3), a person who is the beneficial and registered owner of equity shares of a small business development corporation may make an application in the form prescribed by the Minister for a grant and the Minister may pay a grant equal to,

- (a) 30 per cent in the case of shares of a Northern and Eastern small business development corporation; or
- (b) 25 per cent in the case of shares of a small business development corporation that is not a Northern and Eastern small business development corporation,

of the amount of money actually paid by the applicant to the small business development corporation for equity shares issued to the applicant by that corporation.

(2) The said section 21, as amended by the Statutes of Ontario, 1983, chapter 26, section 6, is further amended by adding thereto the following subsections:

Transitional

(8) Notwithstanding subsection (1), the Minister may pay a grant equal to 30 per cent of the amount of money actually paid by the applicant to the small business development corporation for equity shares where the Minister is satisfied that the shares were fully paid for and issued to the applicant by the small business development corporation prior to the 24th day of October, 1985.

Idem

(9) Where, prior to the 24th day of October, 1985,

- (a) the Minister has consented in writing to the repayment of any advance owing to a shareholder of a small business development corporation in accordance with provisions prescribed under subclause 9 (1) (d) (v); and
- (b) a substantial portion of the advance approved by the Minister has been made,

an application for a grant under subsection (1) shall be treated as if an investment equal to the full amount of the advance approved by the Minister was paid by the applicant to the small business development corporation for equity shares that were fully paid for and issued to the applicant prior to the 24th day of October, 1985.

12.—(1) Subsection 22 (1) of the said Act is repealed and the following substituted therefor:

(1) Subject to subsection (2), a corporation that is the beneficial and registered owner of equity shares of a small business development corporation may, subject to the approval of the Minister, deduct from the tax otherwise payable by it under Part II of the *Corporations Tax Act*, an amount equal to,

Tax credit

R.S.O. 1980,
c. 97

- (a) 30 per cent in the case of shares of a Northern and Eastern small business development corporation; or
- (b) 25 per cent in the case of shares of a small business development corporation that is not a Northern and Eastern small business development corporation,

of the amount of money actually paid by the corporation to the small business development corporation for equity shares issued to it by the corporation.

(2) The said section 22 is amended by adding thereto the following subsections:

(3) Notwithstanding subsection (1), the Minister may approve the deduction by a corporation from the tax otherwise payable by it under Part II of the *Corporations Tax Act* of an amount equal to 30 per cent of the amount of money actually paid by the corporation to the small business development corporation for equity shares where the Minister is satisfied that such shares were fully paid for and issued to the corporation by the small business development corporation prior to the 24th day of October, 1985.

Transitional

R.S.O. 1980,
c. 97

(4) Where, prior to the 24th day of October, 1985,

Idem

- (a) the Minister has consented in writing to the repayment of any advance owing to a shareholder of a small business development corporation in accordance with provisions prescribed under subclause 9 (1) (d) (v); and
- (b) a substantial portion of the advance approved by the Minister has been made,

an application for a tax credit under subsection (1) shall be treated as if an investment equal to the full amount of the advance approved by the Minister was paid by the applicant to the small business development corporation for equity shares that were fully paid for and issued to the applicant prior to the 24th day of October, 1985.

13. Subsections 22a (3) and (4) of the said Act, as enacted by the Statutes of Ontario, 1984, chapter 30, section 8, are repealed and the following substituted therefor:

Incentive
fund election

(3) Before the Minister makes a grant or allows a tax credit to a shareholder of a small business development corporation that is not a Northern and Eastern small business development corporation in respect of equity shares issued on or after the 24th day of October, 1985, the small business development corporation shall file an election in the prescribed form designating, with respect to each such equity share, the fund described in clause (1) (b) or (c) from which a grant or tax credit is to be paid or allowed to the holder of such equity share.

Payment
from funds

(4) The Minister shall make a grant or allow a credit to a shareholder of a small business development corporation with respect to each equity share issued on or after the 24th day of October, 1985,

- (a) from the fund described in clause (1) (a), where the small business development corporation that issued the share is a Northern and Eastern small business development corporation; or
- (b) from the fund designated by the small business development corporation in the election filed under subsection (3) where the small business development corporation that issued the share is not a Northern and Eastern small business development corporation.

14. Paragraphs 1, 2, 3 and 4 of section 24 of the said Act are repealed and the following substituted therefor:

1. Where an equity share of the small business development corporation is purchased or otherwise acquired by the small business development corporation for a total consideration equal to or greater than that for which the share was issued, the small business development corporation shall pay to the Minister an amount equal to,
 - (a) in the case of an equity share of a small business development corporation issued and fully paid for prior to the 24th day of October, 1985,
 - (i) 30 per cent where, at the time of purchase or acquisition, the small business

development corporation does not maintain at least 70 per cent of its assets in the form of eligible investments or is not complying fully with the Act, the spirit and intent of the Act or the regulations, or

- (ii) 25 per cent where, at the time of purchase or acquisition, the small business development corporation is maintaining at least 70 per cent of its assets in the form of eligible investments and is complying fully with the Act, the spirit and intent of the Act and the regulations,

of the consideration paid to the corporation by the shareholder for the share at the time it was issued; or

- (b) in the case of an equity share of a small business development corporation issued and paid for on or after the 24th day of October, 1985, an amount equal to,

- (i) 30 per cent where the share is a share of a Northern and Eastern small business development corporation, or

- (ii) 25 per cent where the share is a share of a small business development corporation that is not a Northern and Eastern small business development corporation,

of the consideration paid to the corporation by the shareholder for the share at the time the share was issued.

2. Where an equity share of the small business development corporation is purchased or otherwise acquired by the small business development corporation for a total consideration that is less than that for which the share was issued, the small business development corporation shall pay to the Minister,

- (a) in the case of an equity share of a small business development corporation issued and fully paid for prior to the 24th day of October, 1985, an amount of money equal to,

- (i) .4286 where, at the time of purchase or acquisition, the small business development corporation does not maintain at least 70 per cent of its assets in the form of eligible investments or is not complying fully with the Act, the spirit and intent of the Act or the regulations, or
- (ii) .3572 where, at the time of purchase or acquisition, the small business development corporation is maintaining at least 70 per cent of its assets in the form of eligible investments and is complying fully with the Act, the spirit and intent of the Act and the regulations,

of the gross consideration paid by the corporation for the purchase or acquisition of the share; or

- (b) in the case of an equity share of a small business development corporation issued and paid for on or after the 24th day of October, 1985, an amount equal to,
 - (i) .4286 where the share is a share of a Northern and Eastern small business development corporation, or
 - (ii) .3572 where the share is a share of a small business development corporation that is not a Northern and Eastern small business development corporation,

of the gross consideration paid by the corporation for the purchase or acquisition of the share.

- 3. Where the registration of a small business development corporation is revoked or where the corporation proposes to wind up or dissolve, it shall pay the Minister,
 - (a) in the case of a small business development corporation registered prior to the 24th day of October, 1985,
 - (i) where, at the time of the revocation, winding up or dissolution, the small business development corporation is not

maintaining 70 per cent of its assets in the form of eligible investments or is not complying with the Act, the spirit and intent of the Act and the regulations, an amount equal to,

(A) 30 per cent of the value of all of the small business development corporation's shareholders' equity to an amount not exceeding the aggregate of the grants or tax credits made or allowed by the Minister in respect of all shares issued and outstanding prior to the 24th day of October, 1985,

(B) 25 per cent of the value of all of the small business development corporation's shareholders' equity to an amount not exceeding the aggregate of the grants or tax credits made or allowed by the Minister in respect of all equity shares issued on or after the 24th day of October, 1985,

and outstanding at the time of revocation, winding up or dissolution, calculated in the manner prescribed, or

(ii) 25 per cent of the value of all the small business development corporation's shareholders' equity to an amount not exceeding the aggregate of the grants or tax credits made or allowed by the Minister in respect of all equity shares issued and outstanding at the time of the revocation, winding up or dissolution, calculated in the manner prescribed, where, at the time of the revocation, winding up or dissolution, the small business development corporation is maintaining 70 per cent of its assets in the form of eligible investments and is complying with the Act, the spirit and intent of the Act and the regulations;

(b) in the case of a small business development corporation registered after the 24th day of October, 1985, an amount equal to,

- (i) 30 per cent where the share is a share of a Northern and Eastern small business development corporation, or
- (ii) 25 per cent where the share is a share of a small business development corporation that is not a Northern and Eastern small business development corporation,

of the value of all of the small business development corporation's shareholders' equity to an amount not exceeding the aggregate of the grants or tax credits made or allowed by the Minister in respect of all equity shares issued and outstanding at the time of revocation, winding up or dissolution calculated in the manner prescribed.

- 4. Subject to paragraph 6, where a small business development corporation reduces by any other means the stated capital account of any class or series of equity shares, the small business development corporation shall pay to the Minister,
 - (a) in the case of a reduction of stated capital with respect to shares issued prior to the 24th day of October, 1985, an amount equal to the lesser of the aggregate of the grants and tax credits made or allowed by the Minister in respect of all equity shares previously issued by the small business development corporation less any amounts previously paid to the Minister under this section and either,
 - (i) 30 per cent of the amount of the reduction to the stated capital accounts where, at the time of the reduction of stated capital, the small business development corporation does not maintain at least 70 per cent of its assets in the form of eligible investments or is not complying fully with the Act, the spirit and intent of the Act or the regulations, or
 - (ii) 25 per cent of the amount of the reduction to the stated capital accounts where, at the time of the reduction of stated capital, the small business development corporation is maintaining at least 70 per cent of its assets in the form of eligible

investments and is complying fully with the Act, the spirit and intent of the Act and the regulations;

- (b) in the case of a reduction of stated capital with respect to shares issued on or after the 24th day of October, 1985, an amount of money equal to the lesser of the aggregate of the grants and tax credits made or allowed by the Minister in respect of all equity shares previously issued by the small business development corporation less any amounts previously paid to the Minister under this subsection and either,
 - (i) 30 per cent of the amount of the reduction to the stated capital accounts where the share is a share of a Northern and Eastern small business development corporation, or
 - (ii) 25 per cent of the amount of the reduction to the stated capital accounts where the share is a share of a small business development corporation that is not a Northern and Eastern small business development corporation.
- 5. Where a small business development corporation proposes to wind up or dissolve or where the registration of the small business development corporation is revoked or its registration is surrendered, the small business development corporation shall immediately pay to the Minister an amount of money, in addition to any other amount under this section, equal to the interest earned on all moneys paid into the trust account established by the small business development corporation under section 8 and not paid out in accordance with subsection 8 (2) or (2a) from the date of registration of the corporation under this Act.
- 6. No amount is payable to the Minister if the reduction to stated capital does not exceed real and unrealized losses associated with assets permitted to be held under section 10 and no reduction in stated capital has been made previously in respect of such losses.

7. For the purposes of this section, the amount to be paid by the small business development corporation to the Minister shall be calculated only with reference to equity shares on which a grant has been paid or a credit has been allowed under the Act and in respect of which no amount has been paid to the Crown pursuant to section 32.
8. For the purposes of this section, "shareholders' equity" means the aggregate of,
 - (a) the stated capital of all classes and series of equity shares;
 - (b) the retained earnings or deficit of the small business development corporation as adjusted to exclude,
 - (i) any prior losses from investments in assets not permitted under the Act,
 - (ii) any prior losses from activities not authorized by the articles of incorporation,
 - (iii) an amount equal to any prior profits less prior dividends paid and payable, to the extent that such amount does not exceed the amount of any prior losses from investments in assets permitted under section 10,
 - (iv) the amount of any prior dividends paid or dividends payable which have rendered or will render the small business development corporation insolvent within the meaning of the *Business Corporations Act*, 1982 or which diminished or will diminish its capital, and
 - (v) expenses paid to an officer, director, shareholder or associate of the small business development corporation, or to an associate of any such officer, director or shareholder, to the extent that such expenses are, in the opinion of the Minister, unreasonable; and
 - (c) such other amounts as may be prescribed.

9. A small business development corporation shall be deemed to have disposed of all its assets at fair market value immediately prior to the revocation or surrender of its registration, its winding up or dissolution for the purpose of determining prior losses or prior profits under clause (b) of paragraph 8.

15.—(1) This Act, except sections 6, 11 and 12, comes into force on the day following the day it receives Royal Assent. Commence-
ment

(2) Sections 6, 11 and 12 shall be deemed to have come into force on the 24th day of October, 1985. Idem

16. The short title of this Act is the *Small Business Development Corporations Amendment Act, 1986*. Short title

Bill 45

An Act to amend the Corporations Tax Act

The Hon. R. Nixon
Minister of Revenue

1st Reading October 24th, 1985
2nd Reading
3rd Reading
Royal Assent



EXPLANATORY NOTES

GENERAL. The Bill implements the proposals contained in the Treasurer's Budget of October 24th, 1985, amends the *Corporations Tax Act* (the "Act") consequential upon the passage of amendments to the *Income Tax Act* (Canada) (the "Federal Act") and provides for certain amendments to the administrative provisions of the Act, including relieving "special small corporations" from the obligation to file annual Ontario tax returns in certain circumstances.

SECTION 1.—Subsection 1. Up-dates a reference to the Federal Act from the previous section number to the current Federal section number as a result of amendments to the Federal Act.

Subsections 2, 3, 4 and 5. Expands the definition of family farm corporations and family fishing corporations to provide that such corporations owned by family holding companies, rather than by family members directly, will qualify for the special \$50 capital tax rate applicable to family farming and fishing corporations, when the ownership to the family farming or fishing corporation has been transferred to a family holding company.

Subsection 6. Adds, by reference to subsection 67 (1a) which is being added to the Act by subsection 29 (2) of the Bill, a definition of a "special small corporation" to section 1 of the Act and is consequential on the amendments to section 67 of the Act set out in section 29 of the Bill.

Subsection 7. Adds subsection 137 (4.3) to the list of sections of the Federal Act which contain references to other sections of the Federal Act which will apply for the purposes of the Act.

SECTION 2. Eliminates the difference in tax treatment between non-residents living in countries with which Canada has entered into a Tax Treaty and non-residents living in countries that have not entered into a Tax Treaty with Canada, in order that all income earned by non-residents from real property, timber resource properties and timber limits in Ontario, whether the income qualifies as business income or as income from property under the Act and the Federal Act, will be taxable under the Act. Currently, this type of income is not taxable under the Act if it qualifies as business income and it has been earned by a non-resident who lives in a "Tax Treaty Country".

SECTIONS 3 and 4. Remove the reference to subsection 2 (3) of the Act which is repealed by section 2 of the Bill.

SECTION 5.—Subsection 1. Provides a technical clarification to the current policy that prevents the deduction in later years, when a corporation is taxable under the Act, of the portion of the losses deducted for Federal purposes during the years when the corporation was not taxable under the Act. For the purposes of determining the amount of losses to be carried forward for Ontario purposes to be applied against future income taxable under the Act, the corporation is deemed to have deducted for Ontario purposes the same losses that were deducted or deductible under the Federal Act. The clarification is to expand the reference to the Federal deductions to include deductions from taxable income as well as from "income".

Subsection 2. Further implements the current policy with respect to losses deducted for Federal purposes as outlined in the note to subsection 1. In addition, new subsection 9 (4) provides that where a corporation has incurred losses for several years, the "oldest" losses are deemed to have been deducted first since there is a statutory time limit for carrying forward certain types of losses.

SECTION 6.—Subsections 1 and 2. Provide that the current provisions in the Act requiring an addition to the income of a corporation, of a percentage of the amount paid, when it pays a (deductible) management fee, rent, royalty or similar type of payment to a non-resident that does not operate at arm's length with the corporation will apply whether or not the amount is subject to Federal withholding taxes. Currently, the

add-back to the income of the payor corporation applies only when the amount is subject to Federal withholding taxes (which are imposed under the Federal Act on payments of certain types to non-residents). This amendment is consequential upon the coming into force of the new Canada-U.S. Tax Treaty which eliminates Canadian withholding taxes on certain of the payments which would have been subject to withholding tax previously. The purpose of the amendment is to ensure that the Canada-U.S. Tax Treaty will not enable corporations to now avoid making the addition to their incomes required under subsection 12 (6) of the Act. The add-back provisions will continue to not apply if the recipient corporation is subject to Ontario income tax on the amount it receives. As well, the amendments reflect the change in the corporation income tax rate from 15 per cent to 15.5 per cent as announced in the Treasurer's Budget of October 24th, 1985.

Subsection 3. The addition of subsection 12 (6b) to the Act provides an "anti-avoidance" provision to enable the Minister to apply subsection 12 (6) of the Act in certain situations where the Minister is satisfied that a corporation and the non-resident recipient of the management fee, rental payment or royalty have attempted to evade the provisions requiring the corporation to add back to its income portion of the payment.

The addition of subsection 12 (16) to the Act implements the provisions of the Treasurer's Budget of October 24th, 1985 of denying to corporations a deduction in the calculation of taxable income for Ontario income tax purposes of the Federal inventory allowance (3 per cent of the corporation's opening inventory for the taxation year).

SECTION 7. Adds further technical clarification of existing policy, through the reference to subsections 39 (7) and (8) of the Federal Act, that corporations may not, for Ontario income tax purposes, treat unused share purchase tax credits and scientific research tax credits as capital losses.

SECTION 8.—Subsections 1 and 2. Enlarge the list of Federal Act sections which do not apply for the purposes of the Ontario Act, including provisions relating to preferred-earnings amounts which have no application for Ontario purposes but relate only to the Federal 12.5 per cent distribution tax payable by small business corporations when dividends are paid, provisions relating to the calculation of Federal unused foreign tax credits on amalgamation, and provisions relating to amalgamations of non-resident owned investment corporations which do not apply for Ontario purposes.

Subsection 3. Adopts for Ontario income tax purposes the determination made by the Minister of National Revenue under the Federal Act of whether to accept the late filing of an election under section 85 of the Federal Act. The effective result will be that the corporation will be treated similarly under both the Ontario and Federal Acts with respect to the deferral (if the election is accepted) and non-deferral (if the election is not accepted) of recognition of capital gains and recapture of capital cost allowance previously claimed when assets are transferred on a "roll-over" basis.

SECTION 9. Is consequential upon the introduction in the Federal Act of section 94.1 as an anti-avoidance provision to prevent tax deferral with respect to income from an investment in an offshore investment fund. The amendment to the Act clarifies that income amounts computed for the purposes of the Federal Act with respect to an offshore investment fund will also apply for the purposes of the Ontario Act in order that when a corporation invests in a security issued by a non-resident entity (called an "offshore investment fund property") which derives its value from portfolio investments made by the non-resident entity, the corporation will be required to include in income an amount calculated with respect to the "designated cost" of the offshore investment fund property, if one of the main reasons for the investment was the deferral of tax.

SECTION 10. Similarly to subsection 8 (3) of the Bill, section 10 is consequential upon amendments to the Federal Act giving the Minister of National Revenue discretion to accept late filed elections. The purpose of the addition of subsection 25 (5) to the Act is to clarify that Ontario will accept for corporations income tax purposes the decision of the Minister of National Revenue on whether or not to accept a late filed election under the Federal Act with respect to a "roll-over" on a tax deferred basis of partners' prop-

erty to a partnership, in order that the corporation will be treated similarly for both Ontario and Federal income tax purposes.

SECTION 11. Contains technical amendments to subsection 27 (5) of the Act in conjunction with amendments to clause 33 (2c) (b) of the Act in section 16 of the Bill, in order to clarify the existing policy that available losses not actually deducted in arriving at taxable income in a year in which the full 15 per cent tax credit has been claimed (a "tax holiday year") are considered to have been deducted for the purpose of calculating taxable income for the year and for the purpose of adjusting the Federal taxable income factor used in determining the base for the small business tax credit.

SECTION 12.—Subsections 1 and 3. Remove references to subsection 2 (3) of the Act which is repealed by section 2 of the Bill.

Subsection 2. The effect of the re-enactment of clause 29 (1) (a) of the Act is to include in the taxable income of a non-resident corporation, for the purposes of Ontario corporations income tax, royalties in respect of real property and timber royalties in respect of timber resource properties and timber limits, as well as continue the present inclusion in taxable income of amounts arising from the rental and sale of real property.

Subsection 4. Provides that where, by reason of transitional provisions applicable in connection with the coming into force of a prescribed tax treaty between Canada and another country, a corporation obtains a more beneficial tax treatment on the disposition of a taxable Canadian property for the purposes of the Federal Act than it would otherwise have under the Treaty, the corporation will be able to take advantage of a comparable benefit for Ontario corporations income tax purposes.

SECTION 13. Implements the Treasurer's October 24th, 1985 Budget proposal to increase the general corporations income tax rate from 15 per cent to 15.5 per cent.

SECTION 14. Is consequential on the increase in the income tax rate to 15.5 per cent in order to permit a deduction from income tax at the new rate with respect to taxable income earned in a province other than Ontario.

SECTION 15.—Subsection 1. Ensures that banks cannot claim a foreign tax credit for Ontario corporations income tax purposes with respect to foreign investment income that has been allocated for income tax purposes to another jurisdiction and is therefore not taxable in Ontario.

Subsection 2. Is consequential upon the increase in the corporations income tax rate to 15.5 per cent as announced in the Treasurer's Budget of October 24th, 1985.

SECTION 16.—Subsection 1. Is consequential on the provisions of the Treasurer's Budget of October 24th, 1985, to parallel the Federal small business tax simplification rules for Ontario purposes for the 1985 and subsequent taxation years, while also providing that those corporations which would not have been eligible for the small business tax rate if the simplification rules had not been introduced will not qualify for the tax holiday which ended on May 13th, 1985, but will qualify for the small business tax rate and not the regular income tax rate.

Subsections 2 and 3. Are technical amendments required to implement the small business tax simplification rules as outlined in the note to subsection 16 (1) of the Bill.

Subsection 4. Is consequential on the amendments contained in subsection 16 (3) of the Bill to up-date a statutory reference.

Subsection 5. Clarifies, together with the amendment to subsection 27 (5) of the Act in section 11 of the Bill, that available losses not actually deducted by a corporation in determining its taxable income during a tax holiday year will be considered to have been deducted for the purposes of calculating taxable income and for the purposes of adjusting

the Federal taxable income factor used in arriving at the base for the small business tax credit.

Subsection 6. Defines the “Ontario small business allocation factor” for use in the calculation of taxable income earned in Ontario and subject to the small business tax rate.

SECTION 17.—Subsections 1 and 2. Are consequential upon the adoption of the small business tax simplification rules for Ontario purposes and the increase in the general corporations income tax rate to 15.5 per cent, as these provisions relate to the existing new enterprise incentive whereby certain small business corporations may qualify for a tax holiday during their first three years of incorporation.

Subsections 3 and 4. Are consequential upon amendments to the Federal Act, in order to maintain definitions in the Ontario Act that were enacted by references to Federal provisions that have been repealed, for the purposes of the provisions relating to a corporation’s eligibility to claim the new enterprise incentive tax credit.

SECTION 18. Is consequential upon the adoption of the small business tax simplification rules for Ontario purposes as announced in the Treasurer’s Budget of October 24th, 1985, in relation to the existing tax credit for corporations engaged in manufacturing and processing, mining, farming, logging and fishing.

SECTION 19. Is consequential upon the increase in the general corporations income tax rate to 15.5 per cent as announced in the Treasurer’s Budget of October 24th, 1985, and upon amendments to the Federal Act, as they relate to mutual fund corporations.

SECTION 20. Eliminates redundant references to subsections 133 (7.1) and (7.2) and paragraphs 133 (8) (b) and (c) of the Federal Act which relate to the election by non-resident owned investment corporations to pay a tax-free dividend out of the capital dividend account, as currently under the Act, all dividends paid by such corporations are tax-free.

SECTION 21. Provides for an additional tax credit of 5.5 per cent, similar to the current Federal 21 per cent tax credit, for credit unions, with respect to taxable income in excess of the amount subject to the small business tax rate, in order that the effective income tax rate imposed on credit union corporations will be 10 per cent in most cases.

SECTION 22. Eliminates a reference to subsection 2 (3) of the Act which is repealed by section 2 of the Bill.

SECTION 23. Eliminates a reference to subsection 2 (3) of the Act which is repealed by section 2 of the Bill.

SECTION 24.—Subsection 1. Corrects an anomaly in the Act by specifying that amounts in respect of foreign accrual property income which are currently required to be included in the calculation of “any other surplus” for the purposes of determining a corporation’s taxable paid-up capital for capital tax purposes will also be included in the cost of investments and total assets for the purposes of determining the amount of investment allowance deductible by the corporation in computing its taxable paid-up capital.

Subsection 2. Provides that subsection 54 (3a) of the Act, as enacted by subsection 1, will not apply in the calculation of taxable paid-up capital for capital tax purposes of banks and loan and trust corporations, while the removal of the reference to subsection 54 (3) results in the requirement that banks and loan and trust corporations include in their taxable paid-up capital for capital tax purposes the amount of any write-down of assets for financial statement purposes that is in excess of the amount allowed for income tax purposes, in order that these corporations compute the amount of their surpluses for capital tax purposes in a manner consistent with other corporations.

SECTION 25. Removes a reference to subsection 2 (3) of the Act which is repealed by section 2 of the Bill.

SECTION 26. Clarifies that all corporations, including banks and loan and trust corporations, are subject to a minimum capital tax of \$50 even if they are not otherwise subject to capital tax under the Act by reason of the amount of their taxable paid-up capital.

SECTION 27. Removes a reference to subsection 2 (3) of the Act which is repealed by section 2 of the Bill.

SECTION 28. Is consequential on the change in definition of a family farm corporation and a family fishing corporation in section 1 of the Bill, in order to continue the current policy that family farm and family fishing corporations, but not any holding companies which own shares of these corporations, will continue to benefit from the flat rate capital tax of \$50.

SECTION 29.—Subsection 1. Provides that special small corporations will not be required to file annual Ontario tax returns unless the Minister makes a request that a return be filed or the corporation wishes the Minister to issue an assessment or reassessment in connection with the carry-back of a loss.

Subsection 2. Defines a special small corporation to be a corporation that was, throughout the taxation year, a Canadian-controlled private corporation which has filed a Federal tax return for the taxation year, has gross revenue for the year and total assets at the end of the year of not more than \$1,000,000, and is subject under the Act to pay only capital tax for the taxation year in an amount that does not exceed \$100.

Subsection 3. Continues the current requirement that every trustee in bankruptcy of a corporation, as well as receivers, assignees, liquidators and similar persons, must file a tax return for the corporation if a return has not been filed for a taxation year, irrespective of whether the corporation is a special small corporation.

SECTION 30. Permits the determination of a deemed day of delivery of a tax return under the Act by regulation, for the purpose of determining if penalties should be imposed under section 68 of the Act for late filing, in order to clarify when a return will be considered to be late filed.

SECTION 31.—Subsection 1. Changes the rules for determining when a Canadian-controlled private corporation will be entitled to pay any balance of its tax owing three months, rather than two months, after the end of the taxation year.

Subsection 2. Provides, for the purposes of determining if a corporation is eligible to continue to pay the balance of tax owing for a taxation year within three months instead of within two months after the end of the taxation year, that if the taxation year was less than 51 weeks, the taxable income limit of \$200,000 for the taxation year as set out in sub-subclause 70 (2) (b) (i) (A), as amended by subsection 1, must be pro-rated in relation to the number of days in that taxation year.

Subsections 3 and 4. Clarify the existing policy that small business corporations should determine the amount of their instalment bases for taxation years after the end of tax holiday years, as well as whether or not they are required under the Act to make instalments in the taxation year, on the assumption that they were eligible for a 10 per cent effective tax rate during the years when they were entitled to a tax holiday under the Act.

SECTION 32.—Subsection 1. Provides that the existing provisions charging a corporation interest with respect to an amount that becomes payable as tax as a result of a reassessment will apply, not only in the situation where the corporation has failed to provide required information in its tax return, as currently provided, but also in the case where a corporation has not filed a tax return on the grounds that it was a special small corporation when in fact it was not.

Subsection 2. Provides for prescribing by regulation the day a payment is deemed to have been made and the date when amounts are deemed to have been paid on account under the Act for the purposes of calculating interest on deficient payments.

SECTION 33.—Subsection 1. Is consequential upon the amendments to subsection 67 (1) of the Act, as contained in section 29 of the Bill, whereby special small corporations are relieved of the requirement to file tax returns under the Act, in order to authorize the Minister to assess tax, interest and penalties in relation to these corporations on the basis of the payment of the balance of tax for the taxation year, rather than on the basis of a tax return.

Subsection 2. Is consequential upon and parallels a recent amendment to the Federal Act which limits the Minister's authority to issue a reassessment, after the filing by a corporation of a waiver of the statutory time limit for issuing reassessments, to one year after the corporation files any notice of revocation of the waiver, unless there are other provisions in the Act under which the Minister may issue a reassessment.

SECTION 34.—Subsection 1. Is consequential upon the amendments to subsection 67 (1) of the Act, as contained in section 29 of the Bill, to authorize the Minister to make applicable refunds, if any, to special small corporations after they have paid any required balance of tax for the taxation year.

Subsection 2. Provides that a tax return shall be deemed to have been delivered, a payment shall be deemed to have been made and an amount shall be deemed to have been paid on account on the day or days prescribed by regulation for the purposes of determining the amount of any refund and interest owing on any tax refunds.

SECTION 35. Clarifies the amount of an overpayment of tax instalments for the purposes of determining the amount of interest payable to a corporation and provides that the overpayment will be deemed to have arisen on a day prescribed by regulation.

Bill 45**1985****An Act to amend the Corporations Tax Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Subclause 1 (1) (aa) (i) of the *Corporations Tax Act*, being chapter 97 of the Revised Statutes of Ontario, 1980, as enacted by the Statutes of Ontario, 1983, chapter 29, section 1, is repealed and the following substituted therefor:

(i) paragraph 125 (7) (d).

(2) Subclause 1 (1) (d) (i) of the said Act, as re-enacted by the Statutes of Ontario, 1981, chapter 37, section 1, is repealed and the following substituted therefor:

(i) all shares of the capital stock of which that confer on the holder thereof the right to vote were owned by,

(A) an individual ordinarily resident in Canada or by that individual and a member or members of that individual's family ordinarily resident in Canada or by another family farm corporation, or

(B) another corporation, all shares of the capital stock of which that confer on the holder thereof the right to vote were owned directly or indirectly by a person or persons referred to in sub-subclause (A).

(3) Subclause 1 (1) (d) (iii) of the said Act, as re-enacted by the Statutes of Ontario, 1981, chapter 37, section 1, is amended by adding at the end thereof "or, where sub-subclause (i) (B) applies, through the employment of the person or persons referred to in sub-subclause (i) (A)".

(4) Subclause 1 (1) (e) (i) of the said Act, as re-enacted by the Statutes of Ontario, 1981, chapter 37, section 1, is repealed and the following substituted therefor:

- (i) all shares of the capital stock of which that confer on the holder thereof the right to vote were owned by,
 - (A) an individual ordinarily resident in Canada or by that individual and a member or members of that individual's family ordinarily resident in Canada or by another family fishing corporation, or
 - (B) another corporation, all shares of the capital stock of which that confer on the holder thereof the right to vote were owned directly or indirectly by a person or persons referred to in sub-subclause (A).

(5) Subclause 1 (1) (e) (iii) of the said Act, as re-enacted by the Statutes of Ontario, 1981, chapter 37, section 1, is amended by adding at the end thereof "or, where sub-subclause (i) (B) applies, through the employment of the person or persons referred to in sub-subclause (i) (A)".

(6) Subsection 1 (1) of the said Act, as amended by the Statutes of Ontario, 1981, chapter 37, section 1, 1983, chapter 29, section 1 and 1984, chapter 29, section 1, is further amended by adding thereto the following clause:

- (ja) "special small corporation" has the meaning given to that expression by subsection 67 (1a).

(7) Subclause 1 (2) (d) (iv) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 29, section 1, is amended by inserting after "paragraph 133 (8) (b)," in the seventh line "subsection 137 (4.3),".

2.—(1) Subsection 2 (2) of the said Act is amended by striking out "which jurisdiction has not entered into a Tax Convention or Treaty with Canada for the taxation year," in the second, third and fourth lines.

(2) Subsections 2 (3) and (4) of the said Act are repealed.

3. Section 3 of the said Act is amended by striking out "or (3)" in the first line.

4. Subsection 6 (2) of the said Act is amended by striking out “or (3)” in the third line.

5.—(1) Subsection 9 (3) of the said Act is amended by inserting after “income” in the fourth line “or taxable income, as the case may be,”.

(2) Section 9 of the said Act is amended by adding thereto the following subsection:

(4) Notwithstanding subsections 111 (1) and (3) of the *Income Tax Act* (Canada) as made applicable by section 27, in the application of subsection (3), where a corporation has deducted an amount in respect of a non-capital loss, net capital loss, restricted farm loss or farm loss determined for a particular taxation year (in this subsection referred to as the “loss year”) in computing its taxable income for another taxation year, the aggregate of such losses determined for the loss year and subsequent taxation years shall, for the purpose of subsection (3), be deemed to be amounts deducted under the provisions of the *Income Tax Act* (Canada) in computing taxable income in previous taxation years in respect of which the corporation was not subject to tax under Part II of this Act, to the extent of the aggregate of such losses deducted in computing taxable income of the corporation for the purposes of the *Income Tax Act* (Canada) for such previous taxation years, and where such aggregate of losses includes losses determined for more than one taxation year, no loss for any year shall be deemed to have been deducted until all losses determined for prior years have been either deducted or deemed to have been deducted.

Idem
R.S.C. 1952,
c. 148

6.—(1) Subsection 12 (6) of the said Act, as re-enacted by the Statutes of Ontario, 1982, chapter 19, section 1 and amended by 1983, chapter 29, section 2, is repealed and the following substituted therefor:

(6) Where an amount in respect of,

(a) a management or administration fee or charge;

(b) a rent, royalty or similar payment; or

(c) a right in or to the use of motion picture film or films or video tapes for use in connection with television that have been or are to be used or reproduced in Canada,

Management
fees, rents,
royalties and
similar
payments to
non-residents

is paid or payable by a corporation to a non-resident person with whom it was not dealing at arm's length, the corporation

shall include 5/15.5 of such amount in computing its income from a business or property for the taxation year in which the amount is deducted in computing its income, except that this subsection does not apply where the non-resident person to whom the amount is paid or payable is a corporation liable to tax imposed under this Act (herein referred to as the "recipient corporation") and the amount has been included in computing the taxable income earned in Canada of the recipient corporation.

(2) Subsection 12 (6a) of the said Act, as enacted by the Statutes of Ontario, 1982, chapter 19, section 1 and amended by 1983, chapter 29, section 2, is further amended by striking out "5/15ths" in the amendment of 1983 and inserting in lieu thereof "5/15.5".

(3) Section 12 of the said Act, as amended by the Statutes of Ontario, 1981, chapter 37, section 3, 1982, chapter 19, section 1, 1983, chapter 29, section 2 and 1984, chapter 29, section 2, is further amended by adding thereto the following subsections:

Idem

(6b) Where it is reasonable for the Minister to believe that one of the principal purposes of the provisions of a contract or arrangement between two or more persons is to avoid the application of subsection (6) to an amount paid or payable to which it would otherwise apply, subsection (6) shall, except where subsection (6a) applies, apply to that portion of the amount which the Minister considers reasonable in the circumstances.

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Inventory
allowance
disallowed
R.S.C. 1952,
c. 148

(16) Paragraph 20 (1) (gg) of the *Income Tax Act* (Canada) is not applicable in computing the income of a corporation for a taxation year for the purposes of this Act.

7. Subsection 13 (2) of the said Act is repealed and the following substituted therefor:

Idem

(2) Subsections 39 (7) and (8) and paragraph 48 (1) (c) of the *Income Tax Act* (Canada) do not apply for the purposes of this Act.

8.—(1) Subsection 23 (3) of the said Act is repealed and the following substituted therefor:

Idem

(3) Paragraphs 87 (2) (y.1), (z), (cc) and 88 (1) (e.7) of the *Income Tax Act* (Canada) are not applicable for the purposes of this Act.

(2) Subsection 23 (4) of the said Act is amended by striking out “paragraph 87 (2) (z)” in the third line and inserting in lieu thereof “paragraphs 87 (2) (y.1) and (cc)”.

(3) Subsection 23 (5) of the said Act, as amended by the Statutes of Ontario, 1984, chapter 29, section 7, is further amended by inserting after “section 84.2,” in the second line “subsection 85 (7.1),”.

9. Subsection 24 (2) of the said Act is repealed and the following substituted therefor:

(2) In the application of the said subdivision i for the purposes of this Act, Definition

- (a) the references therein to “Minister” shall be deemed to be references to the Minister of National Revenue for Canada;
- (b) the reference in subsection 94.1 (1) to “this Part” shall be deemed to be a reference to Part II of this Act; and
- (c) the aggregate referred to in paragraph 94.1 (1) (f) computed for the purposes of that Act shall apply for the purposes of this Act.

10. Section 25 of the said Act is amended by adding thereto the following subsection:

(5) In the application of the said subdivision j for the purposes of this Act, the reference in subsection 96 (5.1) to “Minister” shall be deemed to be a reference to the Minister of National Revenue for Canada. Definition

11. Subsection 27 (5) of the said Act, as enacted by the Statutes of Ontario, 1984, chapter 29, section 8, is amended,

- (a) by adding “Notwithstanding subsection 111 (3) of the *Income Tax Act* (Canada) as made applicable by section 27 of this Act,” at the commencement thereof; and
- (b) by striking out “except for the purposes of clause 33 (2c) (b),” in the fifth line.

12.—(1) Subsection 29 (1) of the said Act is amended by striking out “or (3)” in the second line.

(2) Clause 29 (1) (a) of the said Act is repealed and the following substituted therefor:

- (a) there shall be included,
 - (i) income from property that is real property situated in Canada, or any interest therein, including,
 - (A) amounts that arose from the sale or rental of such property or interest therein, or both, and
 - (B) royalties and similar payments in respect of such property or interest therein, and
 - (ii) timber royalties in respect of a timber resource property or a timber limit situated in Canada.

(3) Subsection 29 (2) of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 37, section 8, is amended by striking out “2 (3) (b)” in the second line and inserting in lieu thereof “2 (2) (b)”.

(4) Section 29 of the said Act, as amended by the Statutes of Ontario, 1981, chapter 37, section 8, is further amended by adding thereto the following subsection:

Idem

R.S.C. 1952,
c. 148

(3) Where a transitional rule in a prescribed Tax Treaty or Convention between Canada and another country has applied to exclude an amount otherwise included in taxable income earned in Canada for the purposes of the *Income Tax Act* (Canada) in respect of a disposition of a taxable Canadian property, that rule shall be applied for the purposes of this Act to determine the amount, if any, to be excluded from taxable income earned in Canada in respect of that disposition.

13. Section 30 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 29, section 11, is further amended by striking out “15 per cent” in the amendment of 1983 and inserting in lieu thereof “15.5 per cent”.

14. Section 31 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 29, section 12, is further amended by striking out “15 per cent” in the amendment of 1983 and inserting in lieu thereof “15.5 per cent”.

15.—(1) Clause 32 (1) (c) of the said Act is repealed and the following substituted therefor:

- (c) for the purposes of subsection 126 (2) of the *Income Tax Act* (Canada), R.S.C. 1952,
c. 148

- (i) such foreign investment income has not been included as part of such foreign business income,
- (ii) such foreign investment income has been excluded from the calculation of gross revenue or any part thereof for the purpose of allocating taxable income to a jurisdiction outside Ontario in accordance with the regulations made under section 31, and
- (iii) where the corporation is a bank which has allocated any of its taxable income for the taxation year to a jurisdiction outside Canada under the regulations made under section 31, such foreign investment income has not been derived from loans and deposits of the bank's permanent establishments in jurisdictions outside Canada used in the determination of such allocation.

(2) Clause 32 (1) (e) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 29, section 9, is amended by striking out "15 per cent" in the first line and inserting in lieu thereof "15.5 per cent".

16.—(1) Clauses 33 (1) (a) and (b) of the said Act, as enacted by the Statutes of Ontario, 1982, chapter 19, section 2 and amended by 1983, chapter 29, section 14, are repealed and the following substituted therefor:

- (a) 5.5 per cent of the amount determined under subsection (2) where the corporation has made a deduction under section 125 of the *Income Tax Act* (Canada); or R.S.C. 1952,
c. 148
- (b) where the year is a tax exempt year, 15 per cent of the amount determined under clause (2a) (b) where the corporation has made a deduction under section 125 of the *Income Tax Act* (Canada), plus 5 per cent of the amount, if any, by which the amount determined under subsection (2) exceeds the amount determined under clause (2a) (b).

(2) Subsection 33 (2) of the said Act, as amended by the Statutes of Ontario, 1982, chapter 19, section 2, is repealed and the following substituted therefor:

Idem

(2) For the purposes of subsections (1) and 33a(1), the amount determined under this subsection is the least of the amounts determined under paragraphs 125 (1) (a), (b) and (c) of the *Income Tax Act* (Canada) for the taxation year, not exceeding \$200,000, multiplied by the Ontario small business allocation factor for the taxation year.

R.S.C. 1952,
c. 148

(3) Subsection 33 (2a) of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 29, section 14, is repealed and the following substituted therefor:

Idem

(2a) For the purposes of clause (1) (b),

(a) a "tax exempt year" of a corporation is a taxation year ending after the 13th day of May, 1982 and before the 14th day of May, 1985, but in no case shall a corporation be entitled to have more than three tax exempt years; and

(b) the amount determined under this clause for the taxation year is the product of the Ontario small business allocation factor for the taxation year multiplied by the lesser of,

(i) \$200,000, and

(ii) the least of the amounts under paragraphs 125 (1) (a), (b), (c) and (d) of the *Income Tax Act* (Canada) determined as if the provisions of section 125 of that Act, as they read on the 31st day of December, 1984, applied to that taxation year.

R.S.C. 1952,
c. 148

(4) Subsection 33 (2b) of the said Act, as enacted by the Statutes of Ontario, 1982, chapter 19, section 2 and amended by 1983, chapter 29, section 14, is further amended by striking out "subsection (2a)" in the first line and inserting in lieu thereof "clause (2a) (a)".

(5) Clause 33 (2c) (b) of the said Act, as enacted by the Statutes of Ontario, 1984, chapter 29, section 10, is amended by inserting after "subsection 27 (1)," in the third line "or deemed to have been deducted by subsection 27 (5),".

(6) Section 33 of the said Act, as amended by the Statutes of Ontario, 1982, chapter 19, section 2, 1983, chapter 29, section 14 and 1984, chapter 29, section 10, is further amended by adding thereto the following subsection:

(2d) For the purposes of this section and section 33a, the Ontario small business allocation factor for the taxation year is the ratio that, Idem

- (a) the amount of that portion of the corporation's taxable income for the taxation year that is deemed to have been earned in Ontario, measured in accordance with paragraph 124 (4) (a) of the *Income Tax Act* (Canada), R.S.C. 1952,
c. 148

is to,

- (b) the total amount of the portions of the corporation's taxable income for the taxation year that are deemed to have been earned in provinces of Canada, measured in accordance with paragraph 124 (4) (a) of the *Income Tax Act* (Canada).

17.—(1) Subsection 33a (1) of the said Act, as enacted by the Statutes of Ontario, 1984, chapter 29, section 11, is repealed and the following substituted therefor:

(1) There may be deducted from the tax otherwise payable under this Part, for the first, second or third taxation year of a corporation that was incorporated after the 13th day of May, 1982, an amount equal to 15.5 per cent of the amount determined under subsection 33 (2), if the corporation is eligible to claim and has claimed, with respect to the taxation year, a deduction under section 125 of the *Income Tax Act* (Canada). New
enterprise
incentive

(2) Subsection 33a (2) of the said Act, as enacted by the Statutes of Ontario, 1984, chapter 29, section 11, is repealed.

(3) Subsection 33a (7) of the said Act, as enacted by the Statutes of Ontario, 1984, chapter 29, section 11, is amended by adding thereto the following clause:

- (aa) "entity" has the meaning ascribed thereto by paragraph 125 (9) (b) of the *Income Tax Act* (Canada) as that paragraph read on the 1st day of January, 1984; and R.S.C. 1952,
c. 148

(4) Section 33a of the said Act, as enacted by the Statutes of Ontario, 1984, chapter 29, section 11, is amended by adding thereto the following subsection:

(8) For the purposes of this section, where a business is at any time a business connected with one or more corporations, Deemed
connected

that business shall be deemed to be a business connected with any other corporation that is controlled at that time by the one or more corporations.

18.—(1) Clause 34 (2) (a) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 29, section 12, is repealed and the following substituted therefor:

- (a) the amount, if any, by which the corporation's eligible Canadian profits for the taxation year exceeds the least of the amounts determined under paragraphs 125 (1) (a), (b) and (c) of the *Income Tax Act* (Canada) in respect of the corporation for the taxation year; and

.

(2) Subclause 34 (2) (b) (i) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 29, section 12, and subclause 34 (2) (b) (ia) of the said Act, as enacted by the Statutes of Ontario, 1984, chapter 29, section 12, are repealed and the following substituted therefor:

- (i) the least of the amounts determined under paragraphs 125 (1) (a), (b) and (c) of the *Income Tax Act* (Canada) in respect of the corporation for the taxation year.

R.S.C. 1952,
c. 148

19.—(1) Subsection 40 (2) of the said Act, as amended by the Statutes of Ontario, 1983, chapter 29, section 15, is repealed and the following substituted therefor:

Idem

(2) In the application of subsection 131 (2) of the said Act for the purposes of this Act,

- (a) the reference to "3 years" in the fourth line thereof shall be read as "4 years";
- (b) the percentage referred to in subparagraph (a) (i) thereof shall be read as "7.75 per cent";
- (c) subparagraph (b) (i) shall be read in its entirety as "the 8 year period referred to in clause 73 (7) (b), where that clause applies"; and
- (d) subparagraph (b) (ii) shall be read in its entirety as "the 6 year period referred to in clause 73 (7) (c), in any other case".

(2) Subsection 40 (4) of the said Act, as amended by the Statutes of Ontario, 1983, chapter 29, section 15, is further amended by striking out “13 1/3 times” in the amendment of 1983 and inserting in lieu thereof “12 28/31 times”.

(3) Clause 40 (5) (a) of the said Act, as enacted by the Statutes of Ontario, 1983, chapter 29, section 15, is amended by striking out “15 per cent” in the second line and inserting in lieu thereof “15.5 per cent”.

20. Subsection 41 (3) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 29, section 13, is repealed and the following substituted therefor:

(3) The provisions of section 134 of the *Income Tax Act* (Canada) are applicable for the purposes of this Act. R.S.C. 1952, c. 148, s. 134 applicable

21.—(1) Subsection 43 (1) of the said Act is amended by striking out “in computing the income of credit unions” in the third line.

(2) Subsection 43 (2) of the said Act is repealed and the following substituted therefor:

(2) Subsection 137 (3) of the said Act is not applicable for the purposes of this Act. Exception

(3) In the application of paragraph 137 (4.3) (a) of the said Act for the purposes of this Act, the reference therein to “the amount deductible under section 125” is deemed to include an amount deemed by subsection 137 (4) of that Act to be an amount deductible or a deduction under section 125 of that Act. Application of R.S.C. 1952, c. 148, s. 137 (4.3) (a)

(4) There may be deducted from the tax otherwise payable under this Part for a taxation year by a corporation that was, throughout the taxation year, a credit union an amount equal to 5.5 per cent of the amount, if any, by which, Additional deduction

(a) the lesser of,

(i) the corporation's taxable income for the year, and

(ii) the amount, if any, by which 4/3 of the corporation's maximum cumulative reserve at the end of the year exceeds the corporation's preferred-rate amount at the end of its immediately preceding taxation year,

exceeds,

R.S.C. 1952,
c. 148

- (b) the least of the amounts determined under paragraphs 125 (1) (a) to (c) of the *Income Tax Act* (Canada) in respect of the corporation for the taxation year.

Idem

(5) For the purposes of subsection (4) and subsection 137 (4.3) of the *Income Tax Act* (Canada), as made applicable by this section, in the calculation of a corporation's deduction, if any, under subsection (4) in respect of the first taxation year for which it is entitled to a deduction under subsection (4), its preferred-rate amount at the end of its immediately preceding taxation year is deemed to be its preferred-rate amount at the end of the immediately preceding taxation year as determined for the purposes of subsection 137 (3) of the *Income Tax Act* (Canada).

22. Clause 50 (b) of the said Act is amended by striking out "or 2 (3) (a) or (b)" in the second line.

23. Section 52 of the said Act is amended by striking out "or 2 (3) (a) or (b)" in the third line.

24.—(1) Section 54 of the said Act, as amended by the Statutes of Ontario, 1981, chapter 37, section 11, 1982, chapter 19, section 4 and 1983, chapter 29, section 18, is further amended by adding thereto the following subsection:

Definition

R.S.C. 1952,
c. 148

(3a) For the purposes of this Part, "total assets" and "cost of investments" includes any amount included in income for the year or a preceding year under subsection 91 (1) of the *Income Tax Act* (Canada) as made applicable by subsection 24 (1) of this Act.

(2) Subsection 54 (4) of the said Act is amended by striking out "Subsections (1) and (3)" in the first line and inserting in lieu thereof "Subsections (1) and (3a)".

25. Subsection 55 (1) of the said Act is amended by striking out "or 2 (3) (a) or (b)," in the third and fourth lines.

26. Section 60 of the said Act is amended by striking out "section 59" in the first line and inserting in lieu thereof "sections 58 and 59".

27. Section 62 of the said Act is amended by striking out "or 2 (3) (c)" in the fourth line.

28.—(1) Subsection 63 (2) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 29, section 18, is amended by striking out “every corporation referred to in clause 1 (1) (d) or (e) and” in the first and second lines and inserting in lieu thereof “a family farm corporation, a family fishing corporation and every corporation referred to in”.

(2) Subsection 63 (3) of the said Act is amended by striking out “corporation referred to in clause 1 (1) (d)” in the first and second lines and inserting in lieu thereof “family farm corporation”.

29.—(1) Subsection 67 (1) of the said Act is repealed and the following substituted therefor:

(1) Every corporation,

Annual
return

- (a) other than a corporation that is a special small corporation, shall, if it is subject to tax under this Act for the taxation year, deliver to the Minister, on or before the last day of the sixth month following the close of the taxation year, such return in respect of the taxation year as is required for the purpose of carrying out the provisions of this Act;
- (b) that is a special small corporation, shall, notwithstanding subclause (1) (a), deliver, in respect of a taxation year or years, such return or returns as may be required for the purposes of carrying out an assessment under subsection 73 (8);
- (c) shall, upon receipt of a notice or demand in writing from the Minister or from any officer of the Ministry of Revenue authorized by the Minister to make such demand, deliver to the Minister such return in respect of the taxation year as is required for the purpose of carrying out the provisions of this Act.

(2) Section 67 of the said Act is amended by adding thereto the following subsection:

(1a) For the purposes of subsection (1), a corporation other than a bank, a corporation registered under the *Loan and Trust Corporations Act* or an insurance corporation to which Part IV applies, is a special small corporation for a taxation year if,

Special
small
corporations
R.S.O. 1980,
c. 249

- (a) it was throughout the taxation year a Canadian-controlled private corporation;

R.S.C. 1952,
c. 148

- (b) it has filed a return under Part I of the *Income Tax Act* (Canada) for the taxation year;
- (c) its gross revenue for the taxation year is less than \$1,000,000;
- (d) the amount of its total assets at the end of the taxation year for the purposes of Part III of this Act is less than \$1,000,000; and
- (e) its only tax payable under this Act for the taxation year is tax imposed by Part III not in excess of \$100.

(3) Subsection 67 (3) of the said Act is repealed and the following substituted therefor:

Trustees,
etc.

(3) Notwithstanding subsection (1), every trustee in bankruptcy, assignee, liquidator, curator, receiver, trustee or committee and every agent or other person administering, managing, winding-up, controlling or otherwise dealing with the property, business, estate or income of a corporation that has not filed a return for the taxation year shall file such return for the corporation in respect of the taxation year as is required for the purpose of carrying out the provisions of this Act.

30. Section 68 of the said Act is amended by adding thereto the following subsection:

Deemed time
of delivery

(1a) For the purposes of subsection (1), the return required under subsection 67 (1) shall be deemed to have been delivered on the day prescribed by regulation.

31.—(1) Subclauses 70 (2) (b) (i) and (ii) of the said Act, are repealed and the following substituted therefor:

(i) subject to subsection (2a), on or before the last day of the third month following the taxation year, where the corporation was, throughout the taxation year, a Canadian-controlled private corporation and,

(A) its taxable income for the immediately preceding taxation year does not exceed \$200,000, or

(B) it was a special small corporation for the taxation year, or

- (ii) on or before the last day of the second month following the taxation year, in any other case.

(2) Section 70 of the said Act, as amended by the Statutes of Ontario, 1981, chapter 37, section 14, 1982, chapter 19, section 5, 1983, chapter 29, section 20 and 1984, chapter 29, section 19, is further amended by adding thereto the following subsection:

(2a) For the purposes of subclause 70 (2) (b) (i), where the immediately preceding taxation year is less than 51 weeks, the reference therein to “\$200,000” shall be read as “that proportion of \$200,000 that the number of days in the immediately preceding taxation year is of 365”.

(3) Subsection 70 (9) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 29, section 19, is amended,

- (a) by striking out “such” in the fourth line and inserting in lieu thereof “a”; and
- (b) by striking out “calculating” in the sixth line.

(4) Clauses 70 (9) (a), (b) and (c) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 29, section 19, are repealed and the following substituted therefor:

- (a) calculating the instalments required under clause (2) (a); and
- (b) calculating its first instalment base and its second instalment base for the purposes of clause (2) (a); and
- (ba) determining whether the tax payable for the immediately preceding taxation year is less than \$2,000 for the purposes of subsection (3),

.

- (c) a tax exempt year within the meaning of clause 33 (2a) (a); and

.

32.—(1) Subsection 72 (5a) of the said Act, as enacted by the Statutes of Ontario, 1983, chapter 29, section 21, is repealed and the following substituted therefor:

(5a) Where a corporation,

Subs. (5) not applicable

- (a) fails to submit the information required by subsection 67 (2), in the return required by subsection 67 (1); or
- (b) did not file a return under subsection 67 (1) for the taxation year on the basis that it was a special small corporation, and it is subsequently determined that it was not a special small corporation for that year,

subsection (5) does not apply if the tax payable by virtue of the reassessment is greater than the tax previously assessed.

(2) Section 72 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 29, section 21, is further amended by adding thereto the following subsections:

Deemed
“day
of payment”

(8) For the purposes of subsections (1) and (4), the “day of payment” shall be deemed to be the day prescribed by regulation.

Deemed
paid

(9) For the purposes of clause (1) (b), an “amount paid on account” shall be deemed to have been paid on the day prescribed by regulation.

33.—(1) Subsection 73 (1) of the said Act is repealed and the following substituted therefor:

Assessment
of returns

(1) The Minister shall, with all due dispatch,

- (a) examine each return delivered under section 67;
- (b) assess the tax for the taxation year and the interest and penalties, if any, payable,
 - (i) on the basis of the corporation’s return in respect of the year, or
 - (ii) where the corporation is a special small corporation for the taxation year, on the basis of the payment of the balance of tax payable for the year as required under sub-subclause 70 (2) (b) (i) (B); and
- (c) determine the amount of refund, if any, to which the corporation may be entitled by virtue of section 38 or 40 for the taxation year.

(2) Section 73 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 29, section 22 and 1984, chapter 29,

section 20, is further amended by adding thereto the following subsection:

(7a) Where the Minister is authorized to issue an assessment under subsection (7) by reason only that the corporation has filed a waiver under subclause (7) (a) (iv) or (v), the Minister may not issue an assessment later than one year after the date on which the corporation has,

When
assessment
may issue

- (a) filed a notice of revocation of the waiver in prescribed form, where the waiver was filed under subclause (7) (a) (iv); or
- (b) filed with the Minister a copy of the notice of revocation of the waiver filed under subsection 152 (4.1) of the *Income Tax Act* (Canada), where the waiver was filed with the Minister of National Revenue under subsection 152 (4) of that Act.

R.S.C. 1952,
c. 148

34.—(1) Subsection 75 (1) of the said Act is amended by inserting after “delivered” in the second line “or, where the corporation is a special small corporation for the taxation year, it has paid the balance of tax payable as required under subclause 70 (2) (b) (i) (B) for the taxation year,”.

(2) Section 75 of the said Act, as amended by the Statutes of Ontario, 1982, chapter 19, section 6 and 1983, chapter 29, section 23, is further amended by adding thereto the following subsection:

(6a) In the application of this section,

Interpretation

- (a) a return shall be deemed to have been delivered for the purposes of subsection (1);
- (b) a payment shall be deemed to have been made for the purposes of subsection (5); and
- (c) an amount shall be deemed to have been paid on account for the purposes of subsection (6),

on the day or days prescribed by regulation.

35. Section 76 of the said Act, as amended by the Statutes of Ontario, 1981, chapter 37, section 16 and 1982, chapter 19, section 7, is further amended by adding thereto the following subsection:

(1a) For the purpose of subsection (1) and subject to subsection (3),

Idem

- (a) “overpayment” means the amount by which the amount paid exceeds the amount required to be paid under clause 70 (2) (a) or (b), as applicable; and
- (b) an overpayment shall be deemed to have arisen on the day prescribed by regulation.

Commence-
ment and
application

36.—(1) Subsection 1 (1), clause 33 (1) (b) of the said Act, as re-enacted by subsection 16 (1) of this Act, subsection 33 (2) of the said Act, as re-enacted by subsection 16 (2) of this Act, except for its application for the purposes of subsection 33a (1) of the said Act, subsections 16 (3) and (4), subsection 33 (2d) of the said Act, as enacted by subsection 16 (6) of this Act, except for its application for the purposes of section 33a of the said Act, section 18, the removal of the reference to subsection 54 (3) of the said Act from subsection 54 (4) of the said Act by subsection 24 (2) of this Act and clause 70 (9) (c) of the said Act, as re-enacted by subsection 31 (4) of this Act, shall be deemed to have come into force on the 1st day of January, 1985 and apply to corporations in respect of all taxation years ending after the 31st day of December, 1984.

Idem

(2) Subsections 1 (2), (3), (4), (5) and (7), subsections 12 (2) and 15 (1), sections 21, 26 and 28, subsection 31 (1), other than in respect of its application to a special small corporation, and subsection 31 (2) come into force on the day after the day this Act receives Royal Assent and apply to corporations in respect of all taxation years ending after the day this Act receives Royal Assent.

Idem

(3) Subsection 1 (6), section 29, subsection 31 (1) as it applies with respect to special small corporations, and subsections 32 (1), 33 (1) and 34 (1) come into force on the 1st day of April, 1986, and apply to corporations with respect to taxation years ending after the 31st day of March, 1986.

Idem

(4) Sections 2, 3 and 4, subsections 12 (1), (3) and (4) and sections 22, 23, 25 and 27 of this Act shall be deemed to have come into force on the 1st day of January, 1985, and apply to corporations in respect of all taxation years commencing after the 31st day of December, 1984.

Idem

(5) Section 5 shall be deemed to have come into force on the 1st day of January, 1983, and applies to the computation of taxable income of corporations for the 1983 and subsequent taxation years and with respect to losses of corporations determined for the 1983 and subsequent taxation years.

(6) Subsection 6 (1) and subsection 12 (6b) of the said Act, as enacted by subsection 6 (3) of this Act, shall be deemed to have come into force on the 1st day of January, 1985 and apply to amounts deducted in computing the income of corporations for taxation years ending after the 31st day of December, 1984, except that, Idem

- (a) the repeal of the reference to clauses 2 (2) (b) and 2 (3) (b) of the said Act in subsection 12 (6) of that Act, as re-enacted by subsection 6 (1) of this Act, shall be deemed to have come into force on the 1st day of January, 1985 and apply to corporations in respect of all taxation years commencing after the 31st day of December, 1984; and
- (b) the substitution in subsection 12 (6) of the said Act, as re-enacted by subsection 6 (1) of this Act, of “5/15.5” in lieu of “5/15ths” shall come into force and apply in the manner set out in subsection (7).

(7) The substitution of “5/15.5” in lieu of “5/15ths” in subsection 12 (6) of the said Act, as re-enacted by subsection 6 (1) of this Act, subsection 6 (2), sections 13 and 14, subsection 15 (2), clause 33 (1) (a) of the said Act, as re-enacted by subsection 16 (1) of this Act, the substitution of “15.5 per cent” in lieu of “15 per cent” in subsection 33a (1) of the said Act, as re-enacted by subsection 17 (1) of this Act, clause 40 (2) (b) of the said Act, as enacted by subsection 19 (1) of this Act, subsections 19 (2) and (3), except for the purposes of computing the “refundable capital gains tax on hand” of mutual fund corporations, shall be deemed to have come into force on the day after the day this Act receives Royal Assent and apply to corporations in respect of all taxation years ending after the day this Act receives Royal Assent, except that with respect to a taxation year ending after the day this Act receives Royal Assent and which includes the day this Act receives Royal Assent, the following rules apply: Idem

- (a) determine the amount of tax payable under Part II of the said Act as that Part stood on the day this Act receives Royal Assent on the assumption that that Part as it then stood was applicable for the taxation year;
- (b) determine the proportion of the amount determined under clause (a) that the number of days of the taxation year occurring on or before the day this Act receives Royal Assent bears to the total number of days in the taxation year;

- (c) determine the amount of tax payable under Part II of the said Act on the assumption that no portion of the taxation year was on or before the day this Act receives Royal Assent;
- (d) determine the proportion of the amount determined under clause (c) that the number of days of the taxation year that are after the day this Act receives Royal Assent bears to the total number of days in the taxation year; and
- (e) determine the aggregate of the amounts determined under clauses (b) and (d) in respect of the corporation,

and the aggregate determined under clause (e) is the amount payable by the corporation under Part II of the said Act for the taxation year.

Idem

(8) Subsection 12 (16) of the said Act, as enacted by subsection 6 (3) of this Act, shall be deemed to have come into force on the day after the day this Act receives Royal Assent and applies to corporations in respect of taxation years ending after the day this Act receives Royal Assent, except that in computing the income of a corporation for a taxation year that includes the day this Act receives Royal Assent, there may be deducted an amount equal to that portion of the amount that would have been deductible for the taxation year, if paragraph 20 (1) (gg) of the *Income Tax Act* (Canada) had still been applicable for the purposes of computing income for the taxation year, that the number of days in the taxation year before the day subsection 12 (16) of the said Act comes into force bears to 365.

R.S.C. 1952,
c. 148

Idem

(9) Section 7 and the reference to paragraph 87 (2) (y.1) of the *Income Tax Act* (Canada) added to subsections 23 (3) and (4) of the said Act by subsections 8 (1) and (2) of this Act shall be deemed to have come into force on the 1st day of January, 1983, and apply to corporations in respect of all taxation years ending after the 31st day of December, 1982.

Idem

(10) The reference to paragraph 88 (1) (e.7) of the *Income Tax Act* (Canada) added to subsection 23 (3) of the said Act, as re-enacted by subsection 8 (1) of this Act, and the removal of the reference to paragraph 87 (2) (z) of the *Income Tax Act* (Canada) in subsection 23 (4) of the said Act, as amended by subsection 8 (2) of this Act, shall be deemed to have come into force on the 1st day of January, 1984, and apply to corporations in respect of all taxation years ending after the 31st day of December, 1983.

(11) The references to paragraphs 87 (2) (cc) of the *Income Tax Act* (Canada) added to subsections 23 (3) and (4) of the said Act by subsections 8 (1) and (2) of this Act, and section 20 come into force on the day this Act receives Royal Assent.

Idem
R.S.C. 1952,
c. 148

(12) Subsection 8 (3) and section 10 are deemed to have come into force on the 16th day of February, 1984, and apply in respect to elections filed or amended by corporations after the 15th day of February, 1984.

Idem

(13) Section 9 shall be deemed to have come into force on the 1st day of January, 1985 and applies,

Idem

(a) after 1985, in the case of an interest in an offshore investment fund property held by a corporation on the 15th day of February, 1984, or a property substituted therefor pursuant to an arrangement that existed on that date, and the reference in subparagraphs 94.1 (2) (a) (ii) and (iv) of the *Income Tax Act* (Canada) to "1984" shall be read as a reference to "1985"; and

(b) in any other case after 1984.

(14) Section 11, subsection 31 (3) and the re-enactment of clauses 70 (9) (a) and (b) and enactment of clause 70 (9) (ba) of the said Act by subsection 31 (4) of this Act shall be deemed to have come into force on the 14th day of May, 1982, with respect to taxation years of corporations ending after the 13th day of May, 1982, where a deduction from tax for any year under clause 33 (1) (b) of the said Act has been claimed, and shall be deemed to have come into force on the 14th day of May, 1985, with respect to taxation years ending after the 13th day of May, 1985, where no deduction from tax for any year has been claimed under clause 33 (1) (b) of the said Act but a deduction from tax has been claimed under subsection 33a (1) of the said Act for any taxation year, except that the words added by clause 11 (a) of this Act to subsection 27 (5) of the said Act do not apply with respect to a taxation year if the taxation year ends prior to 1983 and the unapplied loss is determined for a taxation year ending prior to 1983.

Idem

(15) Subsection 33 (2) of the said Act, as re-enacted by subsection 16 (2) of this Act, as it applies for the purposes of subsection 33a (1) of the said Act, subsection 33 (2d) of the said Act, as enacted by subsection 16 (6) of this Act, as it applies for the purposes of section 33a of the said Act, subsection 33a (1) of the said Act, as re-enacted by subsection 17 (1) of this Act, except with respect to the substitution of "15.5 per cent" for "15 per cent", and subsections 17 (2), (3) and (4) shall be

Idem

deemed to have come into force on the 14th day of May, 1985, and apply to taxation years of corporations ending after the 13th day of May, 1985.

Idem (16) Subsection 16 (5) shall be deemed to have come into force on the 16th day of May, 1984, and applies with respect to taxation years of corporations ending after the 15th day of May, 1984.

Idem (17) Subsection 40 (2) of the said Act, as re-enacted by subsection 19 (1) of this Act, except for the change in percentage in clause 40 (2) (b) of the said Act to "7.75 per cent" from "7.5 per cent", shall be deemed to have come into force on the 20th day of April, 1983.

Idem (18) In the application of subsection 19 (3) for the purposes of computing the "refundable capital gains tax on hand" of mutual fund corporations for the purposes of subsections 40 (5) and (6) of the said Act, the percentage referred to in clauses (A) and (B) of subparagraph 131 (6) (d) (i) of the *Income Tax Act* (Canada) shall, with respect to a taxation year that ends the day after the day this Act receives Royal Assent and that includes that day, be read as 15 per cent plus that proportion of 1/2 of 1 per cent that the number of days of that taxation year after the day this Act receives Royal Assent is of the total number of days in the taxation year.

R.S.C. 1952,
c. 148

Idem (19) Subsection 24 (1) and the inclusion of a reference to subsection 54 (3a) in subsection 54 (4) of the said Act, as added by subsection 24 (2) of this Act, shall be deemed to have come into force on the 14th day of May, 1982, and apply to corporations in respect of all taxation years ending after the 13th day of May, 1982.

Idem (20) Section 30, subsections 32 (2) and 34 (2) and section 35 come into force on the 1st day of April, 1986.

Idem (21) Subsection 33 (2) is applicable with respect to notices of revocation of waiver under the said Act and copies of notices of revocation of waiver under the *Income Tax Act* (Canada) filed with the Minister after the 15th day of February, 1984.

R.S.C. 1952,
c. 148

Short title

37. The short title of this Act is the *Corporations Tax Amendment Act, 1985*.

Bill 45

(Chapter 11
Statutes of Ontario, 1985)

An Act to amend the Corporations Tax Act

The Hon. R. Nixon
Minister of Revenue



<i>1st Reading</i>	October 24th, 1985
<i>2nd Reading</i>	November 5th, 1985
<i>3rd Reading</i>	December 18th, 1985
<i>Royal Assent</i>	December 18th, 1985

Bill 45

1985

An Act to amend the Corporations Tax Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Subclause 1 (1) (aa) (i) of the *Corporations Tax Act*, being chapter 97 of the Revised Statutes of Ontario, 1980, as enacted by the Statutes of Ontario, 1983, chapter 29, section 1, is repealed and the following substituted therefor:

(i) paragraph 125 (7) (d).

(2) Subclause 1 (1) (d) (i) of the said Act, as re-enacted by the Statutes of Ontario, 1981, chapter 37, section 1, is repealed and the following substituted therefor:

(i) all shares of the capital stock of which that confer on the holder thereof the right to vote were owned by,

(A) an individual ordinarily resident in Canada or by that individual and a member or members of that individual's family ordinarily resident in Canada or by another family farm corporation, or

(B) another corporation, all shares of the capital stock of which that confer on the holder thereof the right to vote were owned directly or indirectly by a person or persons referred to in sub-subclause (A).

(3) Subclause 1 (1) (d) (iii) of the said Act, as re-enacted by the Statutes of Ontario, 1981, chapter 37, section 1, is amended by adding at the end thereof “or, where sub-subclause (i) (B) applies, through the employment of the person or persons referred to in sub-subclause (i) (A)”.

(4) Subclause 1 (1) (e) (i) of the said Act, as re-enacted by the Statutes of Ontario, 1981, chapter 37, section 1, is repealed and the following substituted therefor:

(i) all shares of the capital stock of which that confer on the holder thereof the right to vote were owned by,

(A) an individual ordinarily resident in Canada or by that individual and a member or members of that individual's family ordinarily resident in Canada or by another family fishing corporation, or

(B) another corporation, all shares of the capital stock of which that confer on the holder thereof the right to vote were owned directly or indirectly by a person or persons referred to in sub-subclause (A).

(5) Subclause 1 (1) (e) (iii) of the said Act, as re-enacted by the Statutes of Ontario, 1981, chapter 37, section 1, is amended by adding at the end thereof "or, where sub-subclause (i) (B) applies, through the employment of the person or persons referred to in sub-subclause (i) (A)".

(6) Subsection 1 (1) of the said Act, as amended by the Statutes of Ontario, 1981, chapter 37, section 1, 1983, chapter 29, section 1 and 1984, chapter 29, section 1, is further amended by adding thereto the following clause:

(ja) "special small corporation" has the meaning given to that expression by subsection 67 (1a).

(7) Subclause 1 (2) (d) (iv) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 29, section 1, is amended by inserting after "paragraph 133 (8) (b)," in the seventh line "subsection 137 (4.3),".

2.—(1) Subsection 2 (2) of the said Act is amended by striking out "which jurisdiction has not entered into a Tax Convention or Treaty with Canada for the taxation year," in the second, third and fourth lines.

(2) Subsections 2 (3) and (4) of the said Act are repealed.

3. Section 3 of the said Act is amended by striking out "(3)" in the first line.

4. Subsection 6 (2) of the said Act is amended by striking out “or (3)” in the third line.

5.—(1) Subsection 9 (3) of the said Act is amended by inserting after “income” in the fourth line “or taxable income, as the case may be.”.

(2) Section 9 of the said Act is amended by adding thereto the following subsection:

(4) Notwithstanding subsections 111 (1) and (3) of the *Income Tax Act* (Canada) as made applicable by section 27, in the application of subsection (3), where a corporation has deducted an amount in respect of a non-capital loss, net capital loss, restricted farm loss or farm loss determined for a particular taxation year (in this subsection referred to as the “loss year”) in computing its taxable income for another taxation year, the aggregate of such losses determined for the loss year and subsequent taxation years shall, for the purpose of subsection (3), be deemed to be amounts deducted under the provisions of the *Income Tax Act* (Canada) in computing taxable income in previous taxation years in respect of which the corporation was not subject to tax under Part II of this Act, to the extent of the aggregate of such losses deducted in computing taxable income of the corporation for the purposes of the *Income Tax Act* (Canada) for such previous taxation years, and where such aggregate of losses includes losses determined for more than one taxation year, no loss for any year shall be deemed to have been deducted until all losses determined for prior years have been either deducted or deemed to have been deducted.

Idem
R.S.C. 1952,
c. 148

6.—(1) Subsection 12 (6) of the said Act, as re-enacted by the Statutes of Ontario, 1982, chapter 19, section 1 and amended by 1983, chapter 29, section 2, is repealed and the following substituted therefor:

(6) Where an amount in respect of,

(a) a management or administration fee or charge;

(b) a rent, royalty or similar payment; or

(c) a right in or to the use of motion picture film or films or video tapes for use in connection with television that have been or are to be used or reproduced in Canada,

Management
fees, rents,
royalties and
similar
payments to
non-residents

is paid or payable by a corporation to a non-resident person with whom it was not dealing at arm's length, the corporation

shall include 5/15.5 of such amount in computing its income from a business or property for the taxation year in which the amount is deducted in computing its income, except that this subsection does not apply where the non-resident person to whom the amount is paid or payable is a corporation liable to tax imposed under this Act (herein referred to as the "recipient corporation") and the amount has been included in computing the taxable income earned in Canada of the recipient corporation.

(2) Subsection 12 (6a) of the said Act, as enacted by the Statutes of Ontario, 1982, chapter 19, section 1 and amended by 1983, chapter 29, section 2, is further amended by striking out "5/15ths" in the amendment of 1983 and inserting in lieu thereof "5/15.5".

(3) Section 12 of the said Act, as amended by the Statutes of Ontario, 1981, chapter 37, section 3, 1982, chapter 19, section 1, 1983, chapter 29, section 2 and 1984, chapter 29, section 2, is further amended by adding thereto the following subsections:

Idem

(6b) Where it is reasonable for the Minister to believe that one of the principal purposes of the provisions of a contract or arrangement between two or more persons is to avoid the application of subsection (6) to an amount paid or payable to which it would otherwise apply, subsection (6) shall, except where subsection (6a) applies, apply to that portion of the amount which the Minister considers reasonable in the circumstances.

Inventory
allowance
disallowed
R.S.C. 1952,
c. 148

(16) Paragraph 20 (1) (gg) of the *Income Tax Act* (Canada) is not applicable in computing the income of a corporation for a taxation year for the purposes of this Act.

7. Subsection 13 (2) of the said Act is repealed and the following substituted therefor:

Idem

(2) Subsections 39 (7) and (8) and paragraph 48 (1) (c) of the *Income Tax Act* (Canada) do not apply for the purposes of this Act.

8.—(1) Subsection 23 (3) of the said Act is repealed and the following substituted therefor:

Idem

(3) Paragraphs 87 (2) (y.1), (z), (cc) and 88 (1) (e.7) of the *Income Tax Act* (Canada) are not applicable for the purposes of this Act.

(2) Subsection 23 (4) of the said Act is amended by striking out “paragraph 87 (2) (z)” in the third line and inserting in lieu thereof “paragraphs 87 (2) (y.1) and (cc)”.

(3) Subsection 23 (5) of the said Act, as amended by the Statutes of Ontario, 1984, chapter 29, section 7, is further amended by inserting after “section 84.2,” in the second line “subsection 85 (7.1),”.

9. Subsection 24 (2) of the said Act is repealed and the following substituted therefor:

(2) In the application of the said subdivision i for the purposes of this Act, Definition

- (a) the references therein to “Minister” shall be deemed to be references to the Minister of National Revenue for Canada;
- (b) the reference in subsection 94.1 (1) to “this Part” shall be deemed to be a reference to Part II of this Act; and
- (c) the aggregate referred to in paragraph 94.1 (1) (f) computed for the purposes of that Act shall apply for the purposes of this Act.

10. Section 25 of the said Act is amended by adding thereto the following subsection:

(5) In the application of the said subdivision j for the purposes of this Act, the reference in subsection 96 (5.1) to “Minister” shall be deemed to be a reference to the Minister of National Revenue for Canada. Definition

11. Subsection 27 (5) of the said Act, as enacted by the Statutes of Ontario, 1984, chapter 29, section 8, is amended,

- (a) by adding “Notwithstanding subsection 111 (3) of the *Income Tax Act* (Canada) as made applicable by section 27 of this Act,” at the commencement thereof; and
- (b) by striking out “except for the purposes of clause 33 (2c) (b),” in the fifth line.

12.—(1) Subsection 29 (1) of the said Act is amended by striking out “or (3)” in the second line.

(2) Clause 29 (1) (a) of the said Act is repealed and the following substituted therefor:

(a) there shall be included,

(i) income from property that is real property situated in Canada, or any interest therein, including,

(A) amounts that arose from the sale or rental of such property or interest therein, or both, and

(B) royalties and similar payments in respect of such property or interest therein, and

(ii) timber royalties in respect of a timber resource property or a timber limit situated in Canada.

(3) Subsection 29 (2) of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 37, section 8, is amended by striking out “2 (3) (b)” in the second line and inserting in lieu thereof “2 (2) (b)”.

(4) Section 29 of the said Act, as amended by the Statutes of Ontario, 1981, chapter 37, section 8, is further amended by adding thereto the following subsection:

Idem

(3) Where a transitional rule in a prescribed Tax Treaty or Convention between Canada and another country has applied to exclude an amount otherwise included in taxable income earned in Canada for the purposes of the *Income Tax Act* (Canada) in respect of a disposition of a taxable Canadian property, that rule shall be applied for the purposes of this Act to determine the amount, if any, to be excluded from taxable income earned in Canada in respect of that disposition.

R.S.C. 1952,
c. 148

13. Section 30 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 29, section 11, is further amended by striking out “15 per cent” in the amendment of 1983 and inserting in lieu thereof “15.5 per cent”.

14. Section 31 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 29, section 12, is further amended by striking out “15 per cent” in the amendment of 1983 and inserting in lieu thereof “15.5 per cent”.

15.—(1) Clause 32 (1) (c) of the said Act is repealed and the following substituted therefor:

- (c) for the purposes of subsection 126 (2) of the *Income Tax Act* (Canada), R.S.C. 1952,
c. 148

- (i) such foreign investment income has not been included as part of such foreign business income,
- (ii) such foreign investment income has been excluded from the calculation of gross revenue or any part thereof for the purpose of allocating taxable income to a jurisdiction outside Ontario in accordance with the regulations made under section 31, and
- (iii) where the corporation is a bank which has allocated any of its taxable income for the taxation year to a jurisdiction outside Canada under the regulations made under section 31, such foreign investment income has not been derived from loans and deposits of the bank's permanent establishments in jurisdictions outside Canada used in the determination of such allocation.

(2) Clause 32 (1) (e) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 29, section 9, is amended by striking out "15 per cent" in the first line and inserting in lieu thereof "15.5 per cent".

16.—(1) Clauses 33 (1) (a) and (b) of the said Act, as enacted by the Statutes of Ontario, 1982, chapter 19, section 2 and amended by 1983, chapter 29, section 14, are repealed and the following substituted therefor:

- (a) 5.5 per cent of the amount determined under subsection (2) where the corporation has made a deduction under section 125 of the *Income Tax Act* (Canada); or R.S.C. 1952,
c. 148
- (b) where the year is a tax exempt year, 15 per cent of the amount determined under clause (2a) (b) where the corporation has made a deduction under section 125 of the *Income Tax Act* (Canada), plus 5 per cent of the amount, if any, by which the amount determined under subsection (2) exceeds the amount determined under clause (2a) (b).

(2) Subsection 33 (2) of the said Act, as amended by the Statutes of Ontario, 1982, chapter 19, section 2, is repealed and the following substituted therefor:

Idem

(2) For the purposes of subsections (1) and 33a(1), the amount determined under this subsection is the least of the amounts determined under paragraphs 125 (1) (a), (b) and (c) of the *Income Tax Act* (Canada) for the taxation year, not exceeding \$200,000, multiplied by the Ontario small business allocation factor for the taxation year.

R.S.C. 1952,
c. 148

(3) Subsection 33 (2a) of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 29, section 14, is repealed and the following substituted therefor:

Idem

(2a) For the purposes of clause (1) (b),

(a) a "tax exempt year" of a corporation is a taxation year ending after the 13th day of May, 1982 and before the 14th day of May, 1985, but in no case shall a corporation be entitled to have more than three tax exempt years; and

(b) the amount determined under this clause for the taxation year is the product of the Ontario small business allocation factor for the taxation year multiplied by the lesser of,

(i) \$200,000, and

(ii) the least of the amounts under paragraphs 125 (1) (a), (b), (c) and (d) of the *Income Tax Act* (Canada) determined as if the provisions of section 125 of that Act, as they read on the 31st day of December, 1984, applied to that taxation year.

R.S.C. 1952,
c. 148

(4) Subsection 33 (2b) of the said Act, as enacted by the Statutes of Ontario, 1982, chapter 19, section 2 and amended by 1983, chapter 29, section 14, is further amended by striking out "subsection (2a)" in the first line and inserting in lieu thereof "clause (2a) (a)".

(5) Clause 33 (2c) (b) of the said Act, as enacted by the Statutes of Ontario, 1984, chapter 29, section 10, is amended by inserting after "subsection 27 (1)," in the third line "or deemed to have been deducted by subsection 27 (5),".

(6) Section 33 of the said Act, as amended by the Statutes of Ontario, 1982, chapter 19, section 2, 1983, chapter 29, section 14 and 1984, chapter 29, section 10, is further amended by adding thereto the following subsection:

(2d) For the purposes of this section and section 33a, the Ontario small business allocation factor for the taxation year is the ratio that,

- (a) the amount of that portion of the corporation's taxable income for the taxation year that is deemed to have been earned in Ontario, measured in accordance with paragraph 124 (4) (a) of the *Income Tax Act* (Canada),

Idem
R.S.C. 1952,
c. 148

is to,

- (b) the total amount of the portions of the corporation's taxable income for the taxation year that are deemed to have been earned in provinces of Canada, measured in accordance with paragraph 124 (4) (a) of the *Income Tax Act* (Canada).

17.—(1) Subsection 33a (1) of the said Act, as enacted by the Statutes of Ontario, 1984, chapter 29, section 11, is repealed and the following substituted therefor:

(1) There may be deducted from the tax otherwise payable under this Part, for the first, second or third taxation year of a corporation that was incorporated after the 13th day of May, 1982, an amount equal to 15.5 per cent of the amount determined under subsection 33 (2), if the corporation is eligible to claim and has claimed, with respect to the taxation year, a deduction under section 125 of the *Income Tax Act* (Canada).

New
enterprise
incentive

(2) Subsection 33a (2) of the said Act, as enacted by the Statutes of Ontario, 1984, chapter 29, section 11, is repealed.

(3) Subsection 33a (7) of the said Act, as enacted by the Statutes of Ontario, 1984, chapter 29, section 11, is amended by adding thereto the following clause:

- (aa) "entity" has the meaning ascribed thereto by paragraph 125 (9) (b) of the *Income Tax Act* (Canada) as that paragraph read on the 1st day of January, 1984; and

R.S.C. 1952,
c. 148

(4) Section 33a of the said Act, as enacted by the Statutes of Ontario, 1984, chapter 29, section 11, is amended by adding thereto the following subsection:

(8) For the purposes of this section, where a business is at any time a business connected with one or more corporations,

Deemed
connected

that business shall be deemed to be a business connected with any other corporation that is controlled at that time by the one or more corporations.

18.—(1) Clause 34 (2) (a) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 29, section 12, is repealed and the following substituted therefor:

- (a) the amount, if any, by which the corporation's eligible Canadian profits for the taxation year exceeds the least of the amounts determined under paragraphs 125 (1) (a), (b) and (c) of the *Income Tax Act* (Canada) in respect of the corporation for the taxation year; and

(2) Subclause 34 (2) (b) (i) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 29, section 12, and subclause 34 (2) (b) (ia) of the said Act, as enacted by the Statutes of Ontario, 1984, chapter 29, section 12, are repealed and the following substituted therefor:

- (i) the least of the amounts determined under paragraphs 125 (1) (a), (b) and (c) of the *Income Tax Act* (Canada) in respect of the corporation for the taxation year.

R.S.C. 1952,
c. 148

19.—(1) Subsection 40 (2) of the said Act, as amended by the Statutes of Ontario, 1983, chapter 29, section 15, is repealed and the following substituted therefor:

Idem

(2) In the application of subsection 131 (2) of the said Act for the purposes of this Act,

- (a) the reference to "3 years" in the fourth line thereof shall be read as "4 years";
- (b) the percentage referred to in subparagraph (a) (i) thereof shall be read as "7.75 per cent";
- (c) subparagraph (b) (i) shall be read in its entirety as "the 8 year period referred to in clause 73 (7) (b), where that clause applies"; and
- (d) subparagraph (b) (ii) shall be read in its entirety as "the 6 year period referred to in clause 73 (7) (c), in any other case".

(2) Subsection 40 (4) of the said Act, as amended by the Statutes of Ontario, 1983, chapter 29, section 15, is further amended by striking out “13 1/3 times” in the amendment of 1983 and inserting in lieu thereof “12 28/31 times”.

(3) Clause 40 (5) (a) of the said Act, as enacted by the Statutes of Ontario, 1983, chapter 29, section 15, is amended by striking out “15 per cent” in the second line and inserting in lieu thereof “15.5 per cent”.

20. Subsection 41 (3) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 29, section 13, is repealed and the following substituted therefor:

(3) The provisions of section 134 of the *Income Tax Act* (Canada) are applicable for the purposes of this Act.

R.S.C. 1952,
c. 148,
s. 134
applicable

21.—(1) Subsection 43 (1) of the said Act is amended by striking out “in computing the income of credit unions” in the third line.

(2) Subsection 43 (2) of the said Act is repealed and the following substituted therefor:

(2) Subsection 137 (3) of the said Act is not applicable for the purposes of this Act.

Exception

(3) In the application of paragraph 137 (4.3) (a) of the said Act for the purposes of this Act, the reference therein to “the amount deductible under section 125” is deemed to include an amount deemed by subsection 137 (4) of that Act to be an amount deductible or a deduction under section 125 of that Act.

Application
of
R.S.C. 1952,
c. 148,
s. 137 (4.3)
(a)

(4) There may be deducted from the tax otherwise payable under this Part for a taxation year by a corporation that was, throughout the taxation year, a credit union an amount equal to 5.5 per cent of the amount, if any, by which,

Additional
deduction

(a) the lesser of,

(i) the corporation’s taxable income for the year,
and

(ii) the amount, if any, by which 4/3 of the corporation’s maximum cumulative reserve at the end of the year exceeds the corporation’s preferred-rate amount at the end of its immediately preceding taxation year,

exceeds,

R.S.C. 1952,
c. 148

- (b) the least of the amounts determined under paragraphs 125 (1) (a) to (c) of the *Income Tax Act* (Canada) in respect of the corporation for the taxation year.

Idem

(5) For the purposes of subsection (4) and subsection 137 (4.3) of the *Income Tax Act* (Canada), as made applicable by this section, in the calculation of a corporation's deduction, if any, under subsection (4) in respect of the first taxation year for which it is entitled to a deduction under subsection (4), its preferred-rate amount at the end of its immediately preceding taxation year is deemed to be its preferred-rate amount at the end of the immediately preceding taxation year as determined for the purposes of subsection 137 (3) of the *Income Tax Act* (Canada).

22. Clause 50 (b) of the said Act is amended by striking out "or 2 (3) (a) or (b)" in the second line.

23. Section 52 of the said Act is amended by striking out "or 2 (3) (a) or (b)" in the third line.

24.—(1) Section 54 of the said Act, as amended by the Statutes of Ontario, 1981, chapter 37, section 11, 1982, chapter 19, section 4 and 1983, chapter 29, section 18, is further amended by adding thereto the following subsection:

Definition

R.S.C. 1952,
c. 148

(3a) For the purposes of this Part, "total assets" and "cost of investments" includes any amount included in income for the year or a preceding year under subsection 91 (1) of the *Income Tax Act* (Canada) as made applicable by subsection 24 (1) of this Act.

(2) Subsection 54 (4) of the said Act is amended by striking out "Subsections (1) and (3)" in the first line and inserting in lieu thereof "Subsections (1) and (3a)".

25. Subsection 55 (1) of the said Act is amended by striking out "or 2 (3) (a) or (b)," in the third and fourth lines.

26. Section 60 of the said Act is amended by striking out "section 59" in the first line and inserting in lieu thereof "sections 58 and 59".

27. Section 62 of the said Act is amended by striking out "or 2 (3) (c)" in the fourth line.

28.—(1) Subsection 63 (2) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 29, section 18, is amended by striking out “every corporation referred to in clause 1 (1) (d) or (e) and” in the first and second lines and inserting in lieu thereof “a family farm corporation, a family fishing corporation and every corporation referred to in”.

(2) Subsection 63 (3) of the said Act is amended by striking out “corporation referred to in clause 1 (1) (d)” in the first and second lines and inserting in lieu thereof “family farm corporation”.

29.—(1) Subsection 67 (1) of the said Act is repealed and the following substituted therefor:

(1) Every corporation,

Annual
return

- (a) other than a corporation that is a special small corporation, shall, if it is subject to tax under this Act for the taxation year, deliver to the Minister, on or before the last day of the sixth month following the close of the taxation year, such return in respect of the taxation year as is required for the purpose of carrying out the provisions of this Act;
- (b) that is a special small corporation, shall, notwithstanding subclause (1) (a), deliver, in respect of a taxation year or years, such return or returns as may be required for the purposes of carrying out an assessment under subsection 73 (8);
- (c) shall, upon receipt of a notice or demand in writing from the Minister or from any officer of the Ministry of Revenue authorized by the Minister to make such demand, deliver to the Minister such return in respect of the taxation year as is required for the purpose of carrying out the provisions of this Act.

(2) Section 67 of the said Act is amended by adding thereto the following subsection:

(1a) For the purposes of subsection (1), a corporation other than a bank, a corporation registered under the *Loan and Trust Corporations Act* or an insurance corporation to which Part IV applies, is a special small corporation for a taxation year if,

Special
small
corporations
R.S.O. 1980,
c. 249

- (a) it was throughout the taxation year a Canadian-controlled private corporation;

R.S.C. 1952,
c. 148

- (b) it has filed a return under Part I of the *Income Tax Act* (Canada) for the taxation year;
- (c) its gross revenue for the taxation year is less than \$1,000,000;
- (d) the amount of its total assets at the end of the taxation year for the purposes of Part III of this Act is less than \$1,000,000; and
- (e) its only tax payable under this Act for the taxation year is tax imposed by Part III not in excess of \$100.

(3) Subsection 67 (3) of the said Act is repealed and the following substituted therefor:

Trustees,
etc.

(3) Notwithstanding subsection (1), every trustee in bankruptcy, assignee, liquidator, curator, receiver, trustee or committee and every agent or other person administering, managing, winding-up, controlling or otherwise dealing with the property, business, estate or income of a corporation that has not filed a return for the taxation year shall file such return for the corporation in respect of the taxation year as is required for the purpose of carrying out the provisions of this Act.

30. Section 68 of the said Act is amended by adding thereto the following subsection:

Deemed time
of delivery

(1a) For the purposes of subsection (1), the return required under subsection 67 (1) shall be deemed to have been delivered on the day prescribed by regulation.

31.—(1) Subclauses 70 (2) (b) (i) and (ii) of the said Act, are repealed and the following substituted therefor:

- (i) subject to subsection (2a), on or before the last day of the third month following the taxation year, where the corporation was, throughout the taxation year, a Canadian-controlled private corporation and,
 - (A) its taxable income for the immediately preceding taxation year does not exceed \$200,000, or
 - (B) it was a special small corporation for the taxation year, or

- (ii) on or before the last day of the second month following the taxation year, in any other case.

(2) Section 70 of the said Act, as amended by the Statutes of Ontario, 1981, chapter 37, section 14, 1982, chapter 19, section 5, 1983, chapter 29, section 20 and 1984, chapter 29, section 19, is further amended by adding thereto the following subsection:

(2a) For the purposes of subclause 70 (2) (b) (i), where the immediately preceding taxation year is less than 51 weeks, the reference therein to "\$200,000" shall be read as "that proportion of \$200,000 that the number of days in the immediately preceding taxation year is of 365". Idem

(3) Subsection 70 (9) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 29, section 19, is amended,

- (a) by striking out "such" in the fourth line and inserting in lieu thereof "a"; and
- (b) by striking out "calculating" in the sixth line.

(4) Clauses 70 (9) (a), (b) and (c) of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 29, section 19, are repealed and the following substituted therefor:

- (a) calculating the instalments required under clause (2) (a); and
 - (b) calculating its first instalment base and its second instalment base for the purposes of clause (2) (a); and
 - (ba) determining whether the tax payable for the immediately preceding taxation year is less than \$2,000 for the purposes of subsection (3),
-

- (c) a tax exempt year within the meaning of clause 33 (2a) (a); and
-

32.—(1) Subsection 72 (5a) of the said Act, as enacted by the Statutes of Ontario, 1983, chapter 29, section 21, is repealed and the following substituted therefor:

- (5a) Where a corporation,

Subs. (5) not applicable

- (a) fails to submit the information required by subsection 67 (2), in the return required by subsection 67 (1); or
- (b) did not file a return under subsection 67 (1) for the taxation year on the basis that it was a special small corporation, and it is subsequently determined that it was not a special small corporation for that year,

subsection (5) does not apply if the tax payable by virtue of the reassessment is greater than the tax previously assessed.

(2) Section 72 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 29, section 21, is further amended by adding thereto the following subsections:

Deemed
"day
of payment"

(8) For the purposes of subsections (1) and (4), the "day of payment" shall be deemed to be the day prescribed by regulation.

Deemed
paid

(9) For the purposes of clause (1) (b), an "amount paid on account" shall be deemed to have been paid on the day prescribed by regulation.

33.—(1) Subsection 73 (1) of the said Act is repealed and the following substituted therefor:

Assessment
of returns

(1) The Minister shall, with all due dispatch,

- (a) examine each return delivered under section 67;
- (b) assess the tax for the taxation year and the interest and penalties, if any, payable,
 - (i) on the basis of the corporation's return in respect of the year, or
 - (ii) where the corporation is a special small corporation for the taxation year, on the basis of the payment of the balance of tax payable for the year as required under sub-subclause 70 (2) (b) (i) (B); and
- (c) determine the amount of refund, if any, to which the corporation may be entitled by virtue of section 38 or 40 for the taxation year.

(2) Section 73 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 29, section 22 and 1984, chapter 29,

section 20, is further amended by adding thereto the following subsection:

(7a) Where the Minister is authorized to issue an assessment under subsection (7) by reason only that the corporation has filed a waiver under subclause (7) (a) (iv) or (v), the Minister may not issue an assessment later than one year after the date on which the corporation has,

When
assessment
may issue

- (a) filed a notice of revocation of the waiver in prescribed form, where the waiver was filed under subclause (7) (a) (iv); or
- (b) filed with the Minister a copy of the notice of revocation of the waiver filed under subsection 152 (4.1) of the *Income Tax Act* (Canada), where the waiver was filed with the Minister of National Revenue under subsection 152 (4) of that Act.

R.S.C. 1952,
c. 148

34.—(1) Subsection 75 (1) of the said Act is amended by inserting after “delivered” in the second line “or, where the corporation is a special small corporation for the taxation year, it has paid the balance of tax payable as required under subclause 70 (2) (b) (i) (B) for the taxation year,”.

(2) Section 75 of the said Act, as amended by the Statutes of Ontario, 1982, chapter 19, section 6 and 1983, chapter 29, section 23, is further amended by adding thereto the following subsection:

(6a) In the application of this section,

Interpretation

- (a) a return shall be deemed to have been delivered for the purposes of subsection (1);
- (b) a payment shall be deemed to have been made for the purposes of subsection (5); and
- (c) an amount shall be deemed to have been paid on account for the purposes of subsection (6),

on the day or days prescribed by regulation.

35. Section 76 of the said Act, as amended by the Statutes of Ontario, 1981, chapter 37, section 16 and 1982, chapter 19, section 7, is further amended by adding thereto the following subsection:

(1a) For the purpose of subsection (1) and subject to subsection (3),

Idem

- (a) “overpayment” means the amount by which the amount paid exceeds the amount required to be paid under clause 70 (2) (a) or (b), as applicable; and
- (b) an overpayment shall be deemed to have arisen on the day prescribed by regulation.

Commence-
ment and
application

36.—(1) Subsection 1 (1), clause 33 (1) (b) of the said Act, as re-enacted by subsection 16 (1) of this Act, subsection 33 (2) of the said Act, as re-enacted by subsection 16 (2) of this Act, except for its application for the purposes of subsection 33a (1) of the said Act, subsections 16 (3) and (4), subsection 33 (2d) of the said Act, as enacted by subsection 16 (6) of this Act, except for its application for the purposes of section 33a of the said Act, section 18, the removal of the reference to subsection 54 (3) of the said Act from subsection 54 (4) of the said Act by subsection 24 (2) of this Act and clause 70 (9) (c) of the said Act, as re-enacted by subsection 31 (4) of this Act, shall be deemed to have come into force on the 1st day of January, 1985 and apply to corporations in respect of all taxation years ending after the 31st day of December, 1984.

Idem

(2) Subsections 1 (2), (3), (4), (5) and (7), subsections 12 (2) and 15 (1), sections 21, 26 and 28, subsection 31 (1), other than in respect of its application to a special small corporation, and subsection 31 (2) come into force on the day after the day this Act receives Royal Assent and apply to corporations in respect of all taxation years ending after the day this Act receives Royal Assent.

Idem

(3) Subsection 1 (6), section 29, subsection 31 (1) as it applies with respect to special small corporations, and subsections 32 (1), 33 (1) and 34 (1) come into force on the 1st day of April, 1986, and apply to corporations with respect to taxation years ending after the 31st day of March, 1986.

Idem

(4) Sections 2, 3 and 4, subsections 12 (1), (3) and (4) and sections 22, 23, 25 and 27 of this Act shall be deemed to have come into force on the 1st day of January, 1985, and apply to corporations in respect of all taxation years commencing after the 31st day of December, 1984.

Idem

(5) Section 5 shall be deemed to have come into force on the 1st day of January, 1983, and applies to the computation of taxable income of corporations for the 1983 and subsequent taxation years and with respect to losses of corporations determined for the 1983 and subsequent taxation years.

(6) Subsection 6 (1) and subsection 12 (6b) of the said Act, ^{Idem} as enacted by subsection 6 (3) of this Act, shall be deemed to have come into force on the 1st day of January, 1985 and apply to amounts deducted in computing the income of corporations for taxation years ending after the 31st day of December, 1984, except that,

- (a) the repeal of the reference to clauses 2 (2) (b) and 2 (3) (b) of the said Act in subsection 12 (6) of that Act, as re-enacted by subsection 6 (1) of this Act, shall be deemed to have come into force on the 1st day of January, 1985 and apply to corporations in respect of all taxation years commencing after the 31st day of December, 1984; and
- (b) the substitution in subsection 12 (6) of the said Act, as re-enacted by subsection 6 (1) of this Act, of “5/15.5” in lieu of “5/15ths” shall come into force and apply in the manner set out in subsection (7).

(7) The substitution of “5/15.5” in lieu of “5/15ths” in subsection 12 (6) of the said Act, as re-enacted by subsection 6 (1) of this Act, subsection 6 (2), sections 13 and 14, subsection 15 (2), clause 33 (1) (a) of the said Act, as re-enacted by subsection 16 (1) of this Act, the substitution of “15.5 per cent” in lieu of “15 per cent” in subsection 33a (1) of the said Act, as re-enacted by subsection 17 (1) of this Act, clause 40 (2) (b) of the said Act, as enacted by subsection 19 (1) of this Act, subsections 19 (2) and (3), except for the purposes of computing the “refundable capital gains tax on hand” of mutual fund corporations, shall be deemed to have come into force on the day after the day this Act receives Royal Assent and apply to corporations in respect of all taxation years ending after the day this Act receives Royal Assent, except that with respect to a taxation year ending after the day this Act receives Royal Assent and which includes the day this Act receives Royal Assent, the following rules apply: ^{Idem}

- (a) determine the amount of tax payable under Part II of the said Act as that Part stood on the day this Act receives Royal Assent on the assumption that that Part as it then stood was applicable for the taxation year;
- (b) determine the proportion of the amount determined under clause (a) that the number of days of the taxation year occurring on or before the day this Act receives Royal Assent bears to the total number of days in the taxation year;

- (c) determine the amount of tax payable under Part II of the said Act on the assumption that no portion of the taxation year was on or before the day this Act receives Royal Assent;
- (d) determine the proportion of the amount determined under clause (c) that the number of days of the taxation year that are after the day this Act receives Royal Assent bears to the total number of days in the taxation year; and
- (e) determine the aggregate of the amounts determined under clauses (b) and (d) in respect of the corporation,

and the aggregate determined under clause (e) is the amount payable by the corporation under Part II of the said Act for the taxation year.

Idem

(8) Subsection 12 (16) of the said Act, as enacted by subsection 6 (3) of this Act, shall be deemed to have come into force on the day after the day this Act receives Royal Assent and applies to corporations in respect of taxation years ending after the day this Act receives Royal Assent, except that in computing the income of a corporation for a taxation year that includes the day this Act receives Royal Assent, there may be deducted an amount equal to that portion of the amount that would have been deductible for the taxation year, if paragraph 20 (1) (gg) of the *Income Tax Act* (Canada) had still been applicable for the purposes of computing income for the taxation year, that the number of days in the taxation year before the day subsection 12 (16) of the said Act comes into force bears to 365.

R.S.C. 1952,
c. 148

Idem

(9) Section 7 and the reference to paragraph 87 (2) (y.1) of the *Income Tax Act* (Canada) added to subsections 23 (3) and (4) of the said Act by subsections 8 (1) and (2) of this Act shall be deemed to have come into force on the 1st day of January, 1983, and apply to corporations in respect of all taxation years ending after the 31st day of December, 1982.

Idem

(10) The reference to paragraph 88 (1) (e.7) of the *Income Tax Act* (Canada) added to subsection 23 (3) of the said Act, as re-enacted by subsection 8 (1) of this Act, and the removal of the reference to paragraph 87 (2) (z) of the *Income Tax Act* (Canada) in subsection 23 (4) of the said Act, as amended by subsection 8 (2) of this Act, shall be deemed to have come into force on the 1st day of January, 1984, and apply to corporations in respect of all taxation years ending after the 31st day of December, 1983.

(11) The references to paragraphs 87 (2) (cc) of the *Income Tax Act* (Canada) added to subsections 23 (3) and (4) of the said Act by subsections 8 (1) and (2) of this Act, and section 20 come into force on the day this Act receives Royal Assent. Idem
R.S.C. 1952,
c. 148

(12) Subsection 8 (3) and section 10 are deemed to have come into force on the 16th day of February, 1984, and apply in respect to elections filed or amended by corporations after the 15th day of February, 1984. Idem

(13) Section 9 shall be deemed to have come into force on the 1st day of January, 1985 and applies, Idem

(a) after 1985, in the case of an interest in an offshore investment fund property held by a corporation on the 15th day of February, 1984, or a property substituted therefor pursuant to an arrangement that existed on that date, and the reference in subparagraphs 94.1 (2) (a) (ii) and (iv) of the *Income Tax Act* (Canada) to "1984" shall be read as a reference to "1985"; and

(b) in any other case after 1984.

(14) Section 11, subsection 31 (3) and the re-enactment of clauses 70 (9) (a) and (b) and enactment of clause 70 (9) (ba) of the said Act by subsection 31 (4) of this Act shall be deemed to have come into force on the 14th day of May, 1982, with respect to taxation years of corporations ending after the 13th day of May, 1982, where a deduction from tax for any year under clause 33 (1) (b) of the said Act has been claimed, and shall be deemed to have come into force on the 14th day of May, 1985, with respect to taxation years ending after the 13th day of May, 1985, where no deduction from tax for any year has been claimed under clause 33 (1) (b) of the said Act but a deduction from tax has been claimed under subsection 33a (1) of the said Act for any taxation year, except that the words added by clause 11 (a) of this Act to subsection 27 (5) of the said Act do not apply with respect to a taxation year if the taxation year ends prior to 1983 and the unapplied loss is determined for a taxation year ending prior to 1983. Idem

(15) Subsection 33 (2) of the said Act, as re-enacted by subsection 16 (2) of this Act, as it applies for the purposes of subsection 33a (1) of the said Act, subsection 33 (2d) of the said Act, as enacted by subsection 16 (6) of this Act, as it applies for the purposes of section 33a of the said Act, subsection 33a (1) of the said Act, as re-enacted by subsection 17 (1) of this Act, except with respect to the substitution of "15.5 per cent" for "15 per cent", and subsections 17 (2), (3) and (4) shall be Idem

deemed to have come into force on the 14th day of May, 1985, and apply to taxation years of corporations ending after the 13th day of May, 1985.

Idem (16) Subsection 16 (5) shall be deemed to have come into force on the 16th day of May, 1984, and applies with respect to taxation years of corporations ending after the 15th day of May, 1984.

Idem (17) Subsection 40 (2) of the said Act, as re-enacted by subsection 19 (1) of this Act, except for the change in percentage in clause 40 (2) (b) of the said Act to "7.75 per cent" from "7.5 per cent", shall be deemed to have come into force on the 20th day of April, 1983.

Idem (18) In the application of subsection 19 (3) for the purposes of computing the "refundable capital gains tax on hand" of mutual fund corporations for the purposes of subsections 40 (5) and (6) of the said Act, the percentage referred to in clauses (A) and (B) of subparagraph 131 (6) (d) (i) of the *Income Tax Act* (Canada) shall, with respect to a taxation year that ends the day after the day this Act receives Royal Assent and that includes that day, be read as 15 per cent plus that proportion of 1/2 of 1 per cent that the number of days of that taxation year after the day this Act receives Royal Assent is of the total number of days in the taxation year.

R.S.C. 1952,
c. 148

Idem (19) Subsection 24 (1) and the inclusion of a reference to subsection 54 (3a) in subsection 54 (4) of the said Act, as added by subsection 24 (2) of this Act, shall be deemed to have come into force on the 14th day of May, 1982, and apply to corporations in respect of all taxation years ending after the 13th day of May, 1982.

Idem (20) Section 30, subsections 32 (2) and 34 (2) and section 35 come into force on the 1st day of April, 1986.

Idem (21) Subsection 33 (2) is applicable with respect to notices of revocation of waiver under the said Act and copies of notices of revocation of waiver under the *Income Tax Act* (Canada) filed with the Minister after the 15th day of February, 1984.

R.S.C. 1952,
c. 148

Short title **37.** The short title of this Act is the *Corporations Tax Amendment Act, 1985*.

Bill 46

An Act to amend the Income Tax Act

The Hon. R. Nixon
Minister of Revenue

1st Reading October 24th, 1985
2nd Reading
3rd Reading
Royal Assent



EXPLANATORY NOTES

GENERAL. The Bill implements proposals contained in the Treasurer's Budget of October 24th, 1985, amends the *Income Tax Act* consequential upon the passage of amendments to the *Income Tax Act* (Canada) (the "Federal Act") and provides certain administrative amendments to the Act.

SECTION 1. The new section 2b is added to impose the surcharge announced in the Treasurer's Budget applicable to the 1986 taxation year of 3 per cent of Ontario income tax in excess of \$5,000, calculated before foreign tax credit, property tax credit and sales tax credit deductions.

SECTION 2.—Subsection 1. The amendment increases the Ontario income tax rate as announced in the Treasurer's Budget from 48 to 50 per cent of Federal income tax for taxation years after 1985.

Subsection 2. The amendment incorporates the overseas employment tax credit, introduced in the Federal Act effective for 1984 and later taxation years, into the calculation of the Ontario foreign tax credit, applicable to individuals working abroad for six consecutive months or longer for a Canadian resident employer, or an employer that is a foreign affiliate of a Canadian resident, in connection with a resource, construction, installation, agricultural or engineering project.

Subsection 3. The subsection added provides that when a mutual fund trust is eligible to receive a capital gains (income tax) refund under the Act, it will also be entitled to a refund of the applicable portion of the new surcharge payable by the trust.

SECTION 3. Subsection 4 (3) of the Act which has become redundant is repealed and the reference to this subsection is deleted in subsection 4 (4) for the reason that since 1977 farmers and fishermen have been permitted to take advantage of the less restrictive income averaging provisions contained in the Federal Act in the determination of Ontario income tax.

Subsection 4 (3) now reads as follows:

(3) For the purposes of this Act, where the tax payable by an individual under this Part for the year of averaging would, but for subsection (2), be an amount determined under subsection (1), the tax that would have been payable by the individual under the Federal Act for the year of averaging, within the meaning of section 3 of this Act, had no election been made by him under section 119 of the Federal Act for that year, shall be deemed to be the tax payable under the Federal Act by the individual for the year of averaging.

SECTION 4. The three new subsections are added to section 10 of the Act to include provisions similar to recently amended subsections 152 (1.1), (1.2) and (1.3) of the Federal Act, to ensure that the assessment provisions are similar under both the Act and the Federal Act, pursuant to the terms of the Federal-Provincial Collection Agreement.

SECTION 5. The amendment updates an out of date reference in subsection 12 (2) of the Act to a provision in the Federal Act.

SECTION 6. The subsection added to section 13 of the Act is to permit a mutual fund trust, when it is eligible to receive a capital gains (income tax) refund for the year, to reduce the amount of its quarterly Ontario income tax instalments in a similar manner permitted by subsection 156 (2) of the Federal Act in order that the instalments are brought more in line with the actual amount of income tax payable by the trust for the year.

SECTION 7. The amendment adds references to sections 160.1 and 160.2 of the Federal Act to section 15 of the Act in order to parallel two separate provisions in the Federal Act that permit the recovery of a refund of tax paid to a taxpayer which is in excess of

the amount to which the taxpayer is properly entitled and, in the case where an amount is payable out of a registered retirement savings plan or a registered retirement income fund on the death of the annuitant to a person other than the deceased's estate, to make that person jointly and severably liable with the estate of the deceased for the income tax payable under the Act by the estate with respect to that amount.

SECTION 8. The re-enactment of subsection 16 (1) of the Act is to parallel the wording of recently amended subsection 161 (1) of the Federal Act relating to interest owed by taxpayers when tax has been underpaid.

Subsection 16 (1) now reads as follows:

(1) Where the amount paid on account of tax payable by a taxpayer under this Act for a taxation year before the expiration of the time allowed for filing the return for that year is less than the amount of tax payable for the year under this Act, the person liable to pay the tax shall pay interest at the rate per annum prescribed for the purposes of subsection 161 (1) of the Federal Act on the difference between those two amounts from the expiration of the time for filing the return to the day of payment.

SECTION 9. Subsections 19 (3) and (6) are re-enacted and new subsection 19 (3a) is enacted in order to parallel the wording in recently amended subsections 164 (3) and (7) of the Federal Act and to introduce a parallel provision in the Act to recently enacted subsection 164 (3.1) of the Federal Act, all of these provisions relating to interest on Ontario income tax refunds administered by Revenue Canada, Taxation.

SECTION 10. The effect of the amendment to subsection 29 (1) is to give the Lieutenant Governor in Council the authority to make regulations under the Act delegating certain of the Minister's statutory authority to exercise powers and perform duties required under the Act to various designated officers of the Ministry of Revenue, similar to the authority granted to the Lieutenant Governor in Council in other statutes administered by the Minister of Revenue in order that certain functions under the Act that are not carried out by officers of Revenue Canada, Taxation under the Federal-Provincial Collection Agreement may be carried out by officers of the Ministry of Revenue.

SECTION 11. The re-enactment of subsection 36 (8) of the Act is to parallel the wording of recently amended subsection 227 (10) of the Federal Act relating to the assessment of tax of any person who has deducted and withheld income tax on payments made to other persons but who has not remitted such tax.

Subsection 36 (8) now reads as follows:

(8) The Provincial Minister may assess any person for any amount that has been deducted or withheld by that person under this Act or a regulation or that is payable by that person under this section and, upon his sending a notice of assessment to that person, Divisions I and J of Part I of the Federal Act are applicable with necessary modifications.

Bill 46

1985

An Act to amend the Income Tax Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The *Income Tax Act*, being chapter 213 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section:

2b. Every individual shall, in addition to the amount of tax otherwise payable by such taxpayer under this Act, pay an additional income tax equal to 3 per cent of the amount, if any, by which the tax that would, but for section 120.1 of the Federal Act, be otherwise payable under this Act, before any deduction authorized under subsection 3 (8) or section 7, exceeds \$5,000. Surcharge

2.—(1) Subsection 3 (5) of the said Act, as amended by the Statutes of Ontario, 1981, chapter 13, section 1 and 1983, chapter 37, section 2, is further amended,

- (a) by striking out “and” at the end of clause (j); and
- (b) by striking out clause (k) and inserting in lieu thereof:
- (k) 48 per cent in respect of the 1982, 1983, 1984 and 1985 taxation years; and
- (l) 50 per cent in respect of the 1986 and subsequent taxation years.

(2) Subclause 3 (8) (b) (i) of the said Act, as amended by the Statutes of Ontario, 1984, chapter 50, section 2, is further amended by striking out “and” at the end of sub-subclause (C), adding “and” at the end of sub-subclause (D) and by adding thereto the following sub-subclause:

- (E) his income from employment in that country was not from a source in that country to the

extent of the lesser of the amounts determined in respect thereof under paragraphs 122.3 (1) (c) and (d) of the Federal Act for the year,

(3) Section 3 of the said Act, as amended by the Statutes of Ontario, 1981, chapter 13, section 1, 1981, chapter 46, section 2, 1983, chapter 37, section 2 and 1984, chapter 50, section 2, is further amended by adding thereto the following subsection:

Additional
refund

(10a) Where a mutual fund trust is entitled to a capital gains refund for a taxation year under subsection (10) and an amount was paid or is payable by the mutual fund trust under section 2b for the taxation year, the mutual fund trust shall be entitled to receive an additional refund for the taxation year equal to the lesser of,

- (a) the amount paid or payable by the mutual fund trust under section 2b for the taxation year; and
- (b) 3 per cent of the amount of the mutual fund trust's capital gains refund for the taxation year calculated under subsection (10) or (11), as applicable.

3.—(1) Subsection 4 (3) of the said Act is repealed.

(2) Subsection 4 (4) of the said Act is amended by striking out “except subsection (3)” in the first line.

4. Section 10 of the said Act, as amended by the Statutes of Ontario, 1981, chapter 46, section 4, is further amended by adding thereto the following subsections:

Determin-
ation of
losses

(1a) Where the Minister ascertains the amount of a taxpayer's non-capital loss, net capital loss, restricted farm loss or farm loss for a taxation year and that amount is different from the amount reported by the taxpayer in his or her return of income for the year, the Minister shall, at the request of the taxpayer, determine, with all due dispatch, the amount of such loss and shall send a notice of determination to the person by whom the return was filed.

Provisions
applicable

(1b) The provisions of paragraphs 56 (1) (l) and 60 (o) of the Federal Act and the provisions of this Act, as they relate to an assessment or a reassessment and to assessing and reassessing tax, are applicable with necessary modifications to a determination or redetermination and to determining and redetermining amounts under this Division, except that sub-

sections (1) and (2) are not applicable to determinations made under subsection (1a) and, for greater certainty, an original determination of a taxpayer's non-capital loss, net capital loss, restricted farm loss or farm loss for a taxation year may be made by the Minister only at the request of the taxpayer.

(1c) For greater certainty, where the Minister makes a determination of the amount of a taxpayer's non-capital loss, net capital loss, restricted farm loss or farm loss for a taxation year, the determination is (subject to the taxpayer's rights of objection and appeal in respect of the determination and to any redetermination by the Minister) binding on both the Minister and the taxpayer for the purposes of calculating the taxable income of the taxpayer in any other year. Determination binding

5. Subsection 12 (2) of the said Act is amended by striking out “155 (a)” in the fourth and fifth lines and inserting in lieu thereof “155 (1) (a)”.

6. Section 13 of the said Act, as amended by the Statutes of Ontario, 1981, chapter 46, section 6, is further amended by adding thereto the following subsection:

(1a) Notwithstanding subsection (1), the amount payable by a mutual fund trust, within the meaning of subsection 132 (6) of the Federal Act, to the Treasurer on or before any day referred to in clause (1) (a) in a taxation year shall be deemed to be the amount, if any, by which, Mutual fund trusts

- (a) the amount so payable otherwise determined under that subsection,

exceeds,

- (b) 25 per cent of the trust's capital gains refund (within the meaning assigned by subsection 3 (10)) for the taxation year.

7. Section 15 of the said Act is amended by striking out “159 and 160” in the first line and inserting in lieu thereof “159, 160, 160.1 and 160.2”.

8. Subsection 16 (1) of the said Act is repealed and the following substituted therefor:

(1) Where at any time after the day on or before which a return of a taxpayer's income was required to be filed under this Act for a taxation year, General

- (a) the amount of his or her tax payable for the year under this Act,

exceeds,

- (b) the aggregate of all amounts each of which is an amount paid at or before that time on account of his or her tax payable and applied as at that time by the Provincial Minister against the taxpayer's liability for an amount payable under this Act for the year,

the person liable to pay the tax shall pay interest on such excess, for the period after the 19th day of April, 1983 during which it is outstanding, at such rates per annum as are prescribed and are in effect from time to time during the period for the purposes of subsection 161 (1) of the Federal Act.

9.—(1) Subsection 19 (3) of the said Act is repealed and the following substituted therefor:

Interest on
overpayments

(3) Where an amount in respect of an overpayment for a taxation year is refunded, or applied under this section on other liability, interest at the rate per annum prescribed for the purpose of subsection 164 (3) of the Federal Act shall be paid or applied thereon for the period beginning with the latest of,

- (a) the day when the overpayment arose;
- (b) the day on or before which the return of income for the year was required to be filed or would have been required to be filed if tax were payable for the year; and
- (c) the day when the return of income for the year was actually filed,

and ending with the day of refunding or application aforesaid, unless the amount of the interest so calculated is less than \$1, in which event no interest shall be paid or applied under this subsection.

Idem

(3a) Where, at any particular time, interest has been paid to, or applied to a liability of, a taxpayer pursuant to subsection (3) in respect of an overpayment and it is determined at a subsequent time that the actual overpayment was less than the overpayment in respect of which interest was paid or applied, the following rules apply:

1. The amount by which the interest that has been paid or applied exceeds the interest, if any, computed in respect of the amount that is determined at the subsequent time to be the actual overpayment shall be deemed to be an amount (in this subsection referred to as "the amount payable") that became payable under this Act by the taxpayer at the particular time.
2. The taxpayer shall pay interest, at the rate prescribed for the purposes of subsection 161 (1) of the Federal Act, on the amount payable for the period beginning at the particular time and ending on the date of payment.
3. The Provincial Minister may at any time assess the taxpayer in respect of the amount payable and, where the Provincial Minister makes such assessment, the provisions of this Act are applicable, with such modifications as the circumstances require, in respect of the assessment as though it had been made under section 10 of this Act.

(2) Subsection 19 (6) of the said Act is repealed and the following substituted therefor:

(6) In this section, "overpayment" of a taxpayer for a taxation year means the aggregate of all amounts paid on account of his or her tax under this Act for the year minus all amounts payable by him or her under this Act for the year.

Definition

10. Subsection 29 (1) of the said Act is amended by striking out "and" at the end of clause (d) and by adding thereto the following clause:

- (f) authorizing or requiring any officer of the Ministry of Revenue to exercise any power or perform any duty conferred or imposed upon the Provincial Minister by this Act.

11. Subsection 36 (8) of the said Act is repealed and the following substituted therefor:

(8) The Provincial Minister may assess any person for any amount that has been deducted or withheld by that person under this Act or a regulation or that is payable by that person under this section, section 36a or section 41 and, upon the Provincial Minister sending a notice of assessment to that person, Divisions I and J of Part I of the Federal Act are applicable with necessary modifications.

Assessment
for amount
deducted

Commence-
ment and
application

12.—(1) This Act, except sections 1, 2, 4, 7, 8, 9 and 11, comes into force on the day it receives Royal Assent.

Idem

(2) Subsection 2 (1) comes into force on the 1st day of January, 1986.

Idem

(3) Section 1 and subsection 2 (3) come into force on the 1st day of January, 1986, and apply with respect to the 1986 taxation year.

Idem

(4) Subsection 2 (2) shall be deemed to have come into force on the 1st day of January, 1984, and applies with respect to the 1984 and subsequent taxation years.

Idem

(5) Section 4 shall be deemed to have come into force on the 1st day of January, 1983, and applies with respect to assessments and reassessments made, to assessing tax and reassessing tax, to determinations and redeterminations made or to determining or redetermining amounts after 1982.

Idem

(6) Section 7 shall be deemed to have come into force,

(a) with respect to the reference in section 15 of the said Act to section 160.1 of the Federal Act, on the 12th day of December, 1978; and

(b) with respect to the reference in section 15 of the said Act to section 160.2 of the Federal Act, on the 17th day of November, 1978, and applies to deaths occurring after the 16th day of November, 1978.

Idem

(7) Section 8 shall be deemed to have come into force on the 20th day of April, 1983.

Idem

(8) Subsection 9 (1) shall be deemed to have come into force on the 20th day of April, 1983, and applies with respect to interest paid or applied after the 19th day of April, 1983.

Idem

(9) Subsection 9 (2) shall be deemed to have come into force on the 1st day of January, 1983, and applies to the 1983 and subsequent taxation years.

Idem

(10) Section 11 shall be deemed to have come into force on the 13th day of November, 1981, and is applicable after the 12th day of November, 1981.

Short title

13. The short title of this Act is the *Income Tax Amendment Act, 1985*.

Bill 46

(Chapter 12
Statutes of Ontario, 1985)

An Act to amend the Income Tax Act

The Hon. R. Nixon
Minister of Revenue



<i>1st Reading</i>	October 24th, 1985
<i>2nd Reading</i>	November 5th, 1985
<i>3rd Reading</i>	December 18th, 1985
<i>Royal Assent</i>	December 18th, 1985

Bill 46

1985

An Act to amend the Income Tax Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The *Income Tax Act*, being chapter 213 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section:

2b. Every individual shall, in addition to the amount of tax otherwise payable by such taxpayer under this Act, pay an additional income tax equal to 3 per cent of the amount, if any, by which the tax that would, but for section 120.1 of the Federal Act, be otherwise payable under this Act, before any deduction authorized under subsection 3 (8) or section 7, exceeds \$5,000. Surcharge

2.—(1) Subsection 3 (5) of the said Act, as amended by the Statutes of Ontario, 1981, chapter 13, section 1 and 1983, chapter 37, section 2, is further amended,

- (a) by striking out “and” at the end of clause (j); and
- (b) by striking out clause (k) and inserting in lieu thereof:
- (k) 48 per cent in respect of the 1982, 1983, 1984 and 1985 taxation years; and
- (l) 50 per cent in respect of the 1986 and subsequent taxation years.

(2) Subclause 3 (8) (b) (i) of the said Act, as amended by the Statutes of Ontario, 1984, chapter 50, section 2, is further amended by striking out “and” at the end of sub-subclause (C), adding “and” at the end of sub-subclause (D) and by adding thereto the following sub-subclause:

- (E) his income from employment in that country was not from a source in that country to the

extent of the lesser of the amounts determined in respect thereof under paragraphs 122.3 (1) (c) and (d) of the Federal Act for the year,

(3) Section 3 of the said Act, as amended by the Statutes of Ontario, 1981, chapter 13, section 1, 1981, chapter 46, section 2, 1983, chapter 37, section 2 and 1984, chapter 50, section 2, is further amended by adding thereto the following subsection:

Additional
refund

(10a) Where a mutual fund trust is entitled to a capital gains refund for a taxation year under subsection (10) and an amount was paid or is payable by the mutual fund trust under section 2b for the taxation year, the mutual fund trust shall be entitled to receive an additional refund for the taxation year equal to the lesser of,

- (a) the amount paid or payable by the mutual fund trust under section 2b for the taxation year; and
- (b) 3 per cent of the amount of the mutual fund trust's capital gains refund for the taxation year calculated under subsection (10) or (11), as applicable.

3.—(1) Subsection 4 (3) of the said Act is repealed.

(2) Subsection 4 (4) of the said Act is amended by striking out “except subsection (3)” in the first line.

4. Section 10 of the said Act, as amended by the Statutes of Ontario, 1981, chapter 46, section 4, is further amended by adding thereto the following subsections:

Determin-
ation of
losses

(1a) Where the Minister ascertains the amount of a taxpayer's non-capital loss, net capital loss, restricted farm loss or farm loss for a taxation year and that amount is different from the amount reported by the taxpayer in his or her return of income for the year, the Minister shall, at the request of the taxpayer, determine, with all due dispatch, the amount of such loss and shall send a notice of determination to the person by whom the return was filed.

Provisions
applicable

(1b) The provisions of paragraphs 56 (1) (l) and 60 (o) of the Federal Act and the provisions of this Act, as they relate to an assessment or a reassessment and to assessing and reassessing tax, are applicable with necessary modifications to a determination or redetermination and to determining and redetermining amounts under this Division, except that sub-

sections (1) and (2) are not applicable to determinations made under subsection (1a) and, for greater certainty, an original determination of a taxpayer's non-capital loss, net capital loss, restricted farm loss or farm loss for a taxation year may be made by the Minister only at the request of the taxpayer.

(1c) For greater certainty, where the Minister makes a determination of the amount of a taxpayer's non-capital loss, net capital loss, restricted farm loss or farm loss for a taxation year, the determination is (subject to the taxpayer's rights of objection and appeal in respect of the determination and to any redetermination by the Minister) binding on both the Minister and the taxpayer for the purposes of calculating the taxable income of the taxpayer in any other year. Determin-
ation binding

5. Subsection 12 (2) of the said Act is amended by striking out “155 (a)” in the fourth and fifth lines and inserting in lieu thereof “155 (1) (a)”.

6. Section 13 of the said Act, as amended by the Statutes of Ontario, 1981, chapter 46, section 6, is further amended by adding thereto the following subsection:

(1a) Notwithstanding subsection (1), the amount payable by a mutual fund trust, within the meaning of subsection 132 (6) of the Federal Act, to the Treasurer on or before any day referred to in clause (1) (a) in a taxation year shall be deemed to be the amount, if any, by which, Mutual fund
trusts

- (a) the amount so payable otherwise determined under that subsection,

exceeds,

- (b) 25 per cent of the trust's capital gains refund (within the meaning assigned by subsection 3 (10)) for the taxation year.

7. Section 15 of the said Act is amended by striking out “159 and 160” in the first line and inserting in lieu thereof “159, 160, 160.1 and 160.2”.

8. Subsection 16 (1) of the said Act is repealed and the following substituted therefor:

(1) Where at any time after the day on or before which a return of a taxpayer's income was required to be filed under this Act for a taxation year, General

- (a) the amount of his or her tax payable for the year under this Act,

exceeds,

- (b) the aggregate of all amounts each of which is an amount paid at or before that time on account of his or her tax payable and applied as at that time by the Provincial Minister against the taxpayer's liability for an amount payable under this Act for the year,

the person liable to pay the tax shall pay interest on such excess, for the period after the 19th day of April, 1983 during which it is outstanding, at such rates per annum as are prescribed and are in effect from time to time during the period for the purposes of subsection 161 (1) of the Federal Act.

9.—(1) Subsection 19 (3) of the said Act is repealed and the following substituted therefor:

Interest on
overpayments

(3) Where an amount in respect of an overpayment for a taxation year is refunded, or applied under this section on other liability, interest at the rate per annum prescribed for the purpose of subsection 164 (3) of the Federal Act shall be paid or applied thereon for the period beginning with the latest of,

- (a) the day when the overpayment arose;
- (b) the day on or before which the return of income for the year was required to be filed or would have been required to be filed if tax were payable for the year; and
- (c) the day when the return of income for the year was actually filed,

and ending with the day of refunding or application aforesaid, unless the amount of the interest so calculated is less than \$1, in which event no interest shall be paid or applied under this subsection.

Idem

(3a) Where, at any particular time, interest has been paid to, or applied to a liability of, a taxpayer pursuant to subsection (3) in respect of an overpayment and it is determined at a subsequent time that the actual overpayment was less than the overpayment in respect of which interest was paid or applied, the following rules apply:

1. The amount by which the interest that has been paid or applied exceeds the interest, if any, computed in respect of the amount that is determined at the subsequent time to be the actual overpayment shall be deemed to be an amount (in this subsection referred to as “the amount payable”) that became payable under this Act by the taxpayer at the particular time.
2. The taxpayer shall pay interest, at the rate prescribed for the purposes of subsection 161 (1) of the Federal Act, on the amount payable for the period beginning at the particular time and ending on the date of payment.
3. The Provincial Minister may at any time assess the taxpayer in respect of the amount payable and, where the Provincial Minister makes such assessment, the provisions of this Act are applicable, with such modifications as the circumstances require, in respect of the assessment as though it had been made under section 10 of this Act.

(2) Subsection 19 (6) of the said Act is repealed and the following substituted therefor:

(6) In this section, “overpayment” of a taxpayer for a taxation year means the aggregate of all amounts paid on account of his or her tax under this Act for the year minus all amounts payable by him or her under this Act for the year.

Definition

10. Subsection 29 (1) of the said Act is amended by striking out “and” at the end of clause (d) and by adding thereto the following clause:

- (f) authorizing or requiring any officer of the Ministry of Revenue to exercise any power or perform any duty conferred or imposed upon the Provincial Minister by this Act.

11. Subsection 36 (8) of the said Act is repealed and the following substituted therefor:

(8) The Provincial Minister may assess any person for any amount that has been deducted or withheld by that person under this Act or a regulation or that is payable by that person under this section, section 36a or section 41 and, upon the Provincial Minister sending a notice of assessment to that person, Divisions I and J of Part I of the Federal Act are applicable with necessary modifications.

Assessment
for amount
deducted

Commence-
ment and
application

12.—(1) This Act, except sections 1, 2, 4, 7, 8, 9 and 11, comes into force on the day it receives Royal Assent.

Idem

(2) Subsection 2 (1) comes into force on the 1st day of January, 1986.

Idem

(3) Section 1 and subsection 2 (3) come into force on the 1st day of January, 1986, and apply with respect to the 1986 taxation year.

Idem

(4) Subsection 2 (2) shall be deemed to have come into force on the 1st day of January, 1984, and applies with respect to the 1984 and subsequent taxation years.

Idem

(5) Section 4 shall be deemed to have come into force on the 1st day of January, 1983, and applies with respect to assessments and reassessments made, to assessing tax and reassessing tax, to determinations and redeterminations made or to determining or redetermining amounts after 1982.

Idem

(6) Section 7 shall be deemed to have come into force,

(a) with respect to the reference in section 15 of the said Act to section 160.1 of the Federal Act, on the 12th day of December, 1978; and

(b) with respect to the reference in section 15 of the said Act to section 160.2 of the Federal Act, on the 17th day of November, 1978, and applies to deaths occurring after the 16th day of November, 1978.

Idem

(7) Section 8 shall be deemed to have come into force on the 20th day of April, 1983.

Idem

(8) Subsection 9 (1) shall be deemed to have come into force on the 20th day of April, 1983, and applies with respect to interest paid or applied after the 19th day of April, 1983.

Idem

(9) Subsection 9 (2) shall be deemed to have come into force on the 1st day of January, 1983, and applies to the 1983 and subsequent taxation years.

Idem

(10) Section 11 shall be deemed to have come into force on the 13th day of November, 1981, and is applicable after the 12th day of November, 1981.

Short title

13. The short title of this Act is the *Income Tax Amendment Act, 1985*.

Bill 47

An Act to amend the Retail Sales Tax Act

The Hon. R. Nixon
Minister of Revenue



1st Reading October 24th, 1985
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTES

The purpose of the Bill is,

- (a) to provide an exemption from tax to the purchaser of infants' and children's car seats, certain feminine hygiene products and prepared food products purchased from an eating establishment at a total price that does not exceed one dollar;
- (b) to withdraw the exemption from tax to the purchaser of Maple Leaf Gold Coins;
- (c) to enact previous rebates of tax to persons who take tangible personal property out of Ontario for use outside the province and to non-resident persons who pay tax on transient accommodation;
- (d) to establish the time for the remittance of tax collected on admissions to places of amusement;
- (e) to insure that all assessments may be subject to review on objection and appeal, to extend the time for the taxpayer to object to an assessment and to permit the Minister to extend that time where special circumstances prevent the taxpayer from meeting that limit; and
- (f) to withdraw the special search warrant provisions of the Act; the search warrant provisions of the *Provincial Offences Act* will be utilized in their stead.

SECTION 1. The effect of the addition of the reference to subsection 16a (3) is to provide that a person who has paid a penalty assessment under section 16a will receive a refund of any overpayment arising when the assessment is subsequently reduced on objection or appeal. Subsection 2 (10) now reads as follows:

(10) Subject to subsection 16 (8) and to subsection 17 (7), where an assessment or reassessment under this Act or the final decision of a court in proceedings commenced under section 23 establishes that the person assessed or reassessed or the appellant, as the case may be, has overpaid the tax payable under this Act for the period covered by the assessment or reassessment, the amount of such overpayment shall be refunded to him.

SECTION 2. New section 2a enacts the previous rebates of tax to persons who take tangible personal property out of Ontario for use outside the province and to non-resident persons who pay tax on transient accommodation.

SECTION 3.—Subsection 1. The re-enactment of paragraph 1 of subsection 5 (1) of the Act provides an exemption from tax to the purchaser of prepared food products purchased from an eating establishment at a total price that does not exceed one dollar.

Subsection 2. New paragraphs 29 and 30 provide an exemption from tax to the purchaser of certain feminine hygiene products and infants' and children's car seats.

Subsection 3. The effect of the repeal of paragraph 61a is to withdraw the exemption from tax to the purchaser of Maple Leaf Gold Coins.

SECTION 4. The subsections added provide an exemption from tax in the circumstances mentioned in the event of a marriage breakdown.

SECTION 5. The amendment to section 10 of the Act establishes the time at which tax must be collected and remitted with respect to admissions to a place of amusement. Section 10 now reads as follows:

10. The taxes imposed by this Act, whether the purchase price be stipulated to be payable in cash or on terms or by instalments or otherwise, shall be collected at the time of

the sale on the whole amount of the purchase price and be remitted to the Treasurer at the times and in the manner prescribed by the regulations.

SECTION 6. The amendment provides that an assessment that is otherwise valid and binding is subject to being vacated or varied on objection and appeal. Subsection 16a (3) now reads as follows:

(3) An assessment made under this section shall be deemed to be valid and binding notwithstanding any error, defect or omission therein or in any proceeding under this Act relating thereto.

SECTION 7. The amendments provide that an objection may be taken from a penalty assessment issued under section 16a of the Act and extend the time allowed for the taxpayer to object to an assessment from ninety to 180 days. Subsection 22 (1) now reads as follows:

(1) Where a person objects to an assessment made against him under section 16 or 17 or to a statement under section 17 that is served on him, he may, within ninety days from the day of mailing of the statement or notice of assessment, serve on the Minister a notice of objection in duplicate in the prescribed form setting out the reasons for the objection and all relevant facts.

SECTION 8. The re-enactment of subsection 23 (7) of the Act authorizes the Minister to extend the time allowed for service of a notice of objection on application made after the initial time limit has expired where the Minister is satisfied as to the reason that time limit was not met. Subsection 23 (7) now reads as follows:

(7) The time within which a notice of objection under section 22 or a notice of appeal under this section is to be served may be extended by the Minister if application for such extension is made before the time for service of the notice of objection or a notice of appeal, as the case may be, has expired.

SECTION 9. This amendment provides that an application under section 24 does not revive an assessment where the time for appeal has expired. Section 24 now reads as follows:

24. The Minister shall with all due dispatch serve on the person appealing and file in the court a reply to the notice of appeal admitting or denying the facts alleged and containing a statement of such further allegations of fact and all statutory provisions and reasons as he intends to rely on, and where the Minister has failed to serve the reply within 180 days from the date of service upon him of the notice of appeal, the appellant may, upon twenty-one days notice to the Minister, apply to a judge of the Supreme Court for an order requiring the reply to be served within such time as the judge shall order, and the judge may, if he considers it proper in the circumstances, also order that, upon failure by the Minister to serve the reply in the time specified in the order, the assessment with respect to which the appeal is taken shall be vacated and any tax paid pursuant to such assessment shall be repaid to the appellant, but nothing in this section revives an appeal that is void or affects a statement or assessment that has become valid and binding under subsection 16 (8) or subsection 17 (7).

SECTION 10. This amendment removes the special search warrant powers under the Act; the search warrant provisions of the *Provincial Offences Act* will be utilized in their stead. Subsection 29 (4) now reads as follows:

*(4) The Minister may, for any purpose related to the administration or enforcement of this Act, with the approval of a judge of the Supreme Court, which approval the judge is hereby empowered to give upon *ex parte* application, authorize in writing any officer of the Ministry of Revenue, together with such members of the Ontario Provincial Police Force or other peace officers as he calls upon to assist him and such other persons as are named therein, to enter and search, if necessary by force, any building, receptacle or place for documents, books, records, papers or things that may afford evidence as to the contraven-*

tion of any provision of this Act or the regulations and to seize and to take away any such documents, books, records, papers or things and retain them until they are produced in any court proceedings.

SECTION 11. The effect of the amendment is to provide that, where the assessment of a penalty under section 16a has been reduced through objection or appeal, interest is payable on the overpayment. Subsection 33 (2) now reads as follows:

(2) Where by a decision of the Minister under section 22 or by a decision of a court it is finally determined that the tax payable under this Act by a person is less than the amount assessed by the assessment under section 16 or 17 to which objection was made or from which the appeal was taken and the decision makes it appear that there has been an overpayment of tax, the interest payable under subsection (1) on that overpayment shall be computed at such rate as is prescribed by the regulations.

SECTION 12. The Minister is specifically authorized to accept security for the payment of tax in the form of a mortgage, charge or personal guarantee.

SECTION 13. The amendment removes the power to prescribe by regulation gold coins, in addition to the Maple Leaf Gold Coins, to which the exemption from tax contained in paragraph 61a of subsection 5 (1) of the Act applies. The amendment relates to that contained in subsection 3 (3) of the Bill. Clause 45 (2) (j) now reads as follows:

(j) prescribing gold coins to which the exemption contained in paragraph 61a of subsection 5 (1) applies.

Bill 47

1985

An Act to amend the Retail Sales Tax Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 2 (10) of the *Retail Sales Tax Act*, being chapter 454 of the Revised Statutes of Ontario, 1980, as re-enacted by the Statutes of Ontario, 1981, chapter 38, section 1, is amended by inserting after “subsection 16 (8)” in the first line “subsection 16a (3)”.

2. The said Act is amended by adding thereto the following section:

2a.—(1) Where tangible personal property is sold in Ontario and within thirty days of the date of the sale the tangible personal property is taken out of Ontario to be used permanently outside Ontario and the Minister is satisfied that such is the case, the Minister may rebate the tax collected at the time of sale, but no rebate shall be made where the rebate claimed is an amount less than \$7, and no interest shall be paid on the rebate.

Rebate of tax on tangible personal property taken out of Ontario

(2) The Minister may, upon receipt of evidence satisfactory to the Minister, rebate to a person who is not a resident of Ontario the tax paid on the lodging portion of transient accommodation occupied by that person on or after the 16th day of May, 1984, but no interest shall be paid on the rebate.

Rebate of tax on transient accommodation

(3) Where the transient accommodation referred to in subsection (2) has been supplied pursuant to the American plan, modified American plan or other arrangement that combines the provision of lodging and prepared food products at a single price, the Minister may rebate to the person with respect to the provision of the transient accommodation,

Idem

- (a) where one meal has been included in the price of the transient accommodation, 90 per cent of the tax paid;

- (b) where two meals have been included in the price of the transient accommodation, 70 per cent of the tax paid; or
- (c) where three or more meals have been included in the price of the transient accommodation, 60 per cent of the tax paid,

but no interest shall be paid on the rebate.

Application
for rebate

(4) An application for a rebate under this section shall be made in writing and shall set out such information as the Minister may require to determine the eligibility of the applicant for the rebate claimed.

Time for
making
application

(5) No rebate shall be made under this section unless the application therefor is made within three years after the payment of the tax in respect of which the rebate is claimed.

3.—(1) Paragraph 1 of subsection 5 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1982, chapter 36, section 3, is repealed and the following substituted therefor:

1. food products for human consumption except,
 - (a) candies, confections, snack foods and soft drinks, other than soft drinks sold with prepared food products from an eating establishment, as defined by the Minister, at a total price for all soft drinks and prepared food products sold as part of the transaction that does not exceed one dollar, and
 - (b) prepared food products purchased from an eating establishment, as defined by the Minister, the price of which exceeds one dollar.

(2) The said subsection 5 (1), as amended by the Statutes of Ontario, 1981, chapter 38, section 2, 1982, chapter 36, section 3, 1983, chapter 27, section 4, 1983, chapter 48, section 1 and 1983, chapter 81, section 1, is further amended by adding thereto the following paragraphs:

29. feminine hygiene products that are tampons, sanitary pads or sanitary belts;
30. child restraint systems described in subsection 6 (2) and clause 6 (3) (a) of Regulation 485 of the Revised Regulations of Ontario, 1980.

(3) Paragraph 61a of subsection 5 (1) of the said Act, as enacted by the Statutes of Ontario, 1983, chapter 27, section 4, is repealed.

4. Section 6 of the said Act is amended by adding thereto the following subsections:

(3) Subsection 2 (1) does not apply to the consumption or use by a person of tangible personal property acquired from the person's spouse or former spouse where the acquisition is the result of the breakdown or dissolution of the marriage of the person and the spouse or former spouse and is in satisfaction of the person's rights under the *Family Law Reform Act*. Exemption
on marriage
breakdown

R.S.O. 1980,
c. 152

(4) In subsection (3), "spouse" has the meaning given to that expression by clause 14 (b) of the *Family Law Reform Act*. Definition

5. Section 10 of the said Act is amended by inserting after "sale" in the third line "or at the time of the payment of a price of admission, or at the time of the promotional distribution of an admission".

6. Subsection 16a (3) of the said Act, as enacted by the Statutes of Ontario, 1983, chapter 27, section 7, is amended by adding at the commencement thereof "Subject to being vacated or varied on objection or appeal and subject to reassessment".

7.—(1) Subsection 22 (1) of the said Act is amended by striking out "16 or 17" in the second line and inserting in lieu thereof "16, subsection 16a (1) or section 17".

(2) The said subsection 22 (1) is further amended by striking out "ninety" in the third line and inserting in lieu thereof "180".

8. Subsection 23 (7) of the said Act is repealed and the following substituted therefor:

(7) The time within which a notice of objection or a notice of appeal is to be served may be extended by the Minister if application for extension is made, Extension
of time

(a) in respect of a notice of objection under subsection 22 (1),

(i) before the expiration of the time allowed under that subsection for service of notice of the objection, or

(ii) within one year from the day of mailing or delivery by personal service of the notice of assessment or statement of disallowance that is the subject of the objection where the person wishing to make objection furnishes to the Minister an explanation satisfactory to the Minister that explains why the notice of objection could not be served in accordance with subsection 22 (1); or

(b) in respect of a notice of appeal, before the expiration of the time allowed under subsection (1) of this section for the service of the notice of appeal.

9. Section 24 of the said Act, as amended by the Statutes of Ontario, 1982, chapter 36, section 8, is further amended by inserting after “subsection 16 (8)” in the seventeenth line “subsection 16a (3)”.

10. Subsection 29 (4) of the said Act is repealed.

11. Subsection 33 (2) of the said Act is amended by inserting after “16” in the fourth line “16a”.

12. Section 35 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 27, section 13, is further amended by adding thereto the following subsection:

Security
for tax

(1a) Where the Minister considers it advisable to do so, the Minister may accept security for the payment of taxes in any form that the Minister considers satisfactory.

13. Clause 45 (2) (j) of the said Act, as enacted by the Statutes of Ontario, 1983, chapter 27, section 16, is repealed.

Commence-
ment

14.—(1) This Act, except subsection 7 (2) and section 8, comes into force on the day following the day it receives Royal Assent.

Idem

(2) Subsection 7 (2) and section 8 shall be deemed to have come into force on the 15th day of February, 1984.

Short title

15. The short title of this Act is the *Retail Sales Tax Amendment Act, 1985*.

Bill 47

*(Chapter 1
Statutes of Ontario, 1986)*

An Act to amend the Retail Sales Tax Act

The Hon. R. Nixon
Minister of Revenue



<i>1st Reading</i>	October 24th, 1985
<i>2nd Reading</i>	November 5th, 1985
<i>3rd Reading</i>	January 6th, 1986
<i>Royal Assent</i>	January 6th, 1986

Bill 47

1986

An Act to amend the Retail Sales Tax Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 2 (10) of the *Retail Sales Tax Act*, being chapter 454 of the Revised Statutes of Ontario, 1980, as re-enacted by the Statutes of Ontario, 1981, chapter 38, section 1, is amended by inserting after “subsection 16 (8)” in the first line “subsection 16a (3)”.

2. The said Act is amended by adding thereto the following section:

2a.—(1) Where tangible personal property is sold in Ontario and within thirty days of the date of the sale the tangible personal property is taken out of Ontario to be used permanently outside Ontario and the Minister is satisfied that such is the case, the Minister may rebate the tax collected at the time of sale, but no rebate shall be made where the rebate claimed is an amount less than \$7, and no interest shall be paid on the rebate.

Rebate of tax on tangible personal property taken out of Ontario

(2) The Minister may, upon receipt of evidence satisfactory to the Minister, rebate to a person who is not a resident of Ontario the tax paid on the lodging portion of transient accommodation occupied by that person on or after the 16th day of May, 1984, but no interest shall be paid on the rebate.

Rebate of tax on transient accommodation

(3) Where the transient accommodation referred to in subsection (2) has been supplied pursuant to the American plan, modified American plan or other arrangement that combines the provision of lodging and prepared food products at a single price, the Minister may rebate to the person with respect to the provision of the transient accommodation,

Idem

- (a) where one meal has been included in the price of the transient accommodation, 90 per cent of the tax paid;

- (b) where two meals have been included in the price of the transient accommodation, 70 per cent of the tax paid; or
- (c) where three or more meals have been included in the price of the transient accommodation, 60 per cent of the tax paid,

but no interest shall be paid on the rebate.

Application
for rebate

(4) An application for a rebate under this section shall be made in writing and shall set out such information as the Minister may require to determine the eligibility of the applicant for the rebate claimed.

Time for
making
application

(5) No rebate shall be made under this section unless the application therefor is made within three years after the payment of the tax in respect of which the rebate is claimed.

3.—(1) Paragraph 1 of subsection 5 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1982, chapter 36, section 3, is repealed and the following substituted therefor:

1. food products for human consumption except,

- (a) candies, confections, snack foods and soft drinks, other than soft drinks sold with prepared food products from an eating establishment, as defined by the Minister, at a total price for all soft drinks and prepared food products sold as part of the transaction that does not exceed one dollar, and
- (b) prepared food products purchased from an eating establishment, as defined by the Minister, the price of which exceeds one dollar.

(2) The said subsection 5 (1), as amended by the Statutes of Ontario, 1981, chapter 38, section 2, 1982, chapter 36, section 3, 1983, chapter 27, section 4, 1983, chapter 48, section 1 and 1983, chapter 81, section 1, is further amended by adding thereto the following paragraphs:

- 29. feminine hygiene products that are tampons, sanitary pads or sanitary belts;
- 30. child restraint systems described in subsection 6 (2) and clause 6 (3) (a) of Regulation 485 of the Revised Regulations of Ontario, 1980.

(3) Paragraph 61a of subsection 5 (1) of the said Act, as enacted by the Statutes of Ontario, 1983, chapter 27, section 4, is repealed.

4. Section 6 of the said Act is amended by adding thereto the following subsections:

(3) Subsection 2 (1) does not apply to the consumption or use by a person of tangible personal property acquired from the person's spouse or former spouse where the acquisition is the result of the breakdown or dissolution of the marriage of the person and the spouse or former spouse and is in satisfaction of the person's rights under the *Family Law Reform Act*.

Exemption
on marriage
breakdown

R.S.O. 1980,
c. 152

(4) In subsection (3), "spouse" has the meaning given to that expression by clause 14 (b) of the *Family Law Reform Act*.

Definition

5. Section 10 of the said Act is amended by inserting after "sale" in the third line "or at the time of the payment of a price of admission, or at the time of the promotional distribution of an admission".

6. Subsection 16a (3) of the said Act, as enacted by the Statutes of Ontario, 1983, chapter 27, section 7, is amended by adding at the commencement thereof "Subject to being vacated or varied on objection or appeal and subject to reassessment".

7.—(1) Subsection 22 (1) of the said Act is amended by striking out "16 or 17" in the second line and inserting in lieu thereof "16, subsection 16a (1) or section 17".

(2) The said subsection 22 (1) is further amended by striking out "ninety" in the third line and inserting in lieu thereof "180".

8. Subsection 23 (7) of the said Act is repealed and the following substituted therefor:

(7) The time within which a notice of objection or a notice of appeal is to be served may be extended by the Minister if application for extension is made,

Extension
of time

(a) in respect of a notice of objection under subsection 22 (1),

(i) before the expiration of the time allowed under that subsection for service of notice of the objection, or

(ii) within one year from the day of mailing or delivery by personal service of the notice of assessment or statement of disallowance that is the subject of the objection where the person wishing to make objection furnishes to the Minister an explanation satisfactory to the Minister that explains why the notice of objection could not be served in accordance with subsection 22 (1); or

(b) in respect of a notice of appeal, before the expiration of the time allowed under subsection (1) of this section for the service of the notice of appeal.

9. Section 24 of the said Act, as amended by the Statutes of Ontario, 1982, chapter 36, section 8, is further amended by inserting after “subsection 16 (8)” in the seventeenth line “subsection 16a (3)”.

10. Subsection 29 (4) of the said Act is repealed.

11. Subsection 33 (2) of the said Act is amended by inserting after “16” in the fourth line “16a”.

12. Section 35 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 27, section 13, is further amended by adding thereto the following subsection:

Security
for tax

(1a) Where the Minister considers it advisable to do so, the Minister may accept security for the payment of taxes in any form that the Minister considers satisfactory.

13. Clause 45 (2) (j) of the said Act, as enacted by the Statutes of Ontario, 1983, chapter 27, section 16, is repealed.

Commence-
ment

14.—(1) This Act, except subsection 7 (2) and section 8, comes into force on the day following the day it receives Royal Assent.

Idem

(2) Subsection 7 (2) and section 8 shall be deemed to have come into force on the 15th day of February, 1984.

Short title

15. The short title of this Act is the *Retail Sales Tax Amendment Act, 1986*.

Bill 48



An Act to amend the Land Transfer Tax Act

The Hon. R. Nixon
Minister of Revenue

1st Reading October 24th, 1985
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTES

The purpose of the Bill is,

- (a) to replace the existing rates of tax exigible upon registration of a conveyance of land with new rates of .5 per cent of the value of the consideration given for the conveyance up to and including \$55,000 and 1 per cent upon the remainder of the value of the consideration given;
- (b) to provide for an additional amount of tax calculated at the rate of .5 per cent on the amount by which the value of the consideration given for a conveyance of land that contains at least one and not more than two single family residences exceeds \$250,000;
- (c) to extend the time for the taxpayer to object to an assessment and to permit the Minister to extend that time where special circumstances prevent the taxpayer from meeting that limit; and
- (d) to place a limit upon the time in which the Minister must reply to a taxpayer's objection and to provide a mechanism for the taxpayer to have an assessment vacated or a refund allowed where the Minister does not meet that limitation.

SECTION 1.—Subsection 1. The definition of “land” is amended to expressly include a structure that will be built on that land where the agreement for the construction of that structure is part of an agreement which includes the conveyance of the land. Clause 1 (1) (d) now reads as follows:

- (d) *“land” includes lands, tenements and hereditaments and any estate, right or interest therein, a leasehold interest or estate, the interest of an optionee, the interest of a purchaser under an agreement to sell land, or goodwill attributable to the location of land or to the existence thereon of any building or fixture, and fixtures.*

Subsection 2. A definition of a “single family residence” is added to the Act. It is relevant to the additional tax of .5 per cent imposed under clause 2 (1) (d) of the Act, set out in section 2 of the Bill.

SECTION 2.—Subsection 1. The effect of the re-enactment of subsection 2 (1) of the Act is to,

- (a) replace the existing rates of tax exigible upon registration of a conveyance of land with new rates of .5 per cent of the value of the consideration given for the conveyance up to and including \$55,000 and 1 per cent upon the remainder of the value of the consideration given; and
- (b) provide for an additional amount of tax calculated at the rate of .5 per cent on the amount by which the value of the consideration given for a conveyance of land that contains at least one and not more than two single family residences exceeds \$250,000.

Subsection 2 (1) now reads as follows:

(1) Every person who tenders for registration in Ontario,

- (a) a conveyance whereby any land is conveyed to or in trust for any transferee who is not a non-resident person; or*
- (b) a conveyance that is a conveyance only of unrestricted land and upon which is endorsed or to which is attached a certification by the Minister, or by some person authorized by the Minister in writing to make the certification, that all of the land being conveyed is unrestricted land,*

shall, before the conveyance is registered, pay a tax computed at the rate of two-fifths of 1 per cent of the value of the consideration for the conveyance up to and including \$45,000, and at the rate of four-fifths of 1 per cent upon the remainder of the value of the consideration.

New subsection 2 (1a) authorizes the Minister to apportion the consideration where only a part of land being conveyed is liable to the additional tax imposed under clause 2 (1) (d).

Subsection 2. The re-enactment of subsection 2 (6) of the Act provides for the calculation of tax on the conveyance to a non-resident person of land, only part of which is unrestricted land, where the unrestricted land includes at least one and not more than two single family residences. Subsection 2 (6) now reads as follows:

(6) Where only a part of the land being conveyed is unrestricted land and the conveyance is to or in trust for any non-resident person, the Minister may, to the extent that he considers it practicable, determine what amount of the value of the consideration for the conveyance is reasonably attributable to the unrestricted land being conveyed, and the person tendering the conveyance for registration is, notwithstanding subsection (1) or (2), liable to a tax computed at the rate of four-fifths of 1 per cent of such amount so determined, and is liable to a tax computed at the rate of 20 per cent of the amount of the value of the consideration for the conveyance that is determined by the Minister not to be reasonably attributable to the unrestricted land being conveyed.

SECTION 3. The re-enactment of subsection 4 (1) of the Act provides that where the value of the consideration for a conveyance exceeds \$250,000, the person required to file the required affidavit must disclose whether the land conveyed contains at least one and not more than two single family residences. Subsection 4 (1) now reads as follows:

(1) There shall be filed with the collector and attached by him to the conveyance to which it relates an affidavit in the prescribed form setting out the true value of the consideration for the conveyance, the true amount in cash and the value of any property or security included in the value of the consideration, the amount or value of any lien or encumbrance subject to which the conveyance was made, and such affidavit shall state whether the transferee to whom the land is being conveyed is a non-resident person or the trustee for a non-resident person and shall contain such other information as the Minister may prescribe to be disclosed.

SECTION 4. The amendment provides that a person who knowingly makes an affidavit that falsely states whether the land being conveyed contains at least one and not more than two single family residences is guilty of an offence and is liable to a fine. Subsection 6 (1) as it will now read is set out below showing underlined words added:

(1) Every person who knowingly contravenes any provision of this Act or who knowingly makes an affidavit required by this Act that falsely discloses the value of the consideration for any conveyance of land or falsely states that a person who is a non-resident person is not a non-resident person, or falsely states whether the land being conveyed contains at least one and not more than two single family residences, is guilty of an offence and on conviction is liable to a fine of not less than the amount of tax that was not paid to the collector as provided for in this Act plus an amount of not less than \$50 and not more than \$1,000.

SECTION 5.—Subsection 1. The added subsection provides for a refund of the additional rate of tax paid on the value of the consideration in excess of \$250,000 given with respect to a single family residence constructed on agricultural land where the transferee farms the land and produces food, natural fibres or other products in sufficient quantities to render the transferee eligible for a farm tax reduction rebate or where the transferee otherwise qualifies for such a reduction rebate within the three years following the registration of the conveyance.

Subsection 2. This subsection provides a method for the calculation of tax refundable to persons who are not non-residents where the conveyance with respect to the registration of which the refund is being calculated is a conveyance of land only part of which contains at least one and not more than two single family residences the value of the consideration given for which exceeds \$250,000.

SECTION 6. The amendment extends the time for making an objection to an assessment or to the disallowance of a refund from ninety days to 180 days.

SECTION 7.—Subsection 1. The re-enactment of subsection 12 (5) of the Act will limit the time provided for the Minister to reply to a notice of appeal to 180 days and provide a mechanism for having the assessment vacated or the refund allowed if the limitation is not met. Subsection 12 (5) now reads as follows:

(5) After the service on him of a notice of appeal under this section, the Minister shall with all due despatch serve on the person appealing and file in the Supreme Court where the notice of appeal was filed a reply to the notice of appeal admitting or denying the facts alleged and containing a statement of such further allegations of fact and of such statutory provisions and reasons as he considers relevant.

Subsection 2. The re-enactment of subsection 12 (10) of the Act authorizes the Minister to extend the time allowed for service of a notice of objection on application made after the initial time limit has expired where the Minister is satisfied as to the reason that time limit was not met. Subsection 12 (10) now reads as follows:

(10) The time within which a notice of objection under subsection 11 (1) or a notice of appeal under subsection (1) of this section is to be served may be extended by the Minister if application for extension is made before expiration of the time for service of the notice of objection or notice of appeal, as the case may be.

SECTION 8. The Minister is specifically authorized to accept security for the payment of tax.

SECTION 9. The effect of the addition of the references to subsection 2 (1a) is to provide a method of calculation of that part of the tax to be deferred or remitted to non-residents where the conveyance with respect to the registration of which the deferral or remittance is being calculated is a conveyance of land only part of which consists of at least one and not more than two single family residences the value of the consideration given for which exceeds \$250,000.

Bill 48

1985

An Act to amend the Land Transfer Tax Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Clause 1 (1) (d) of the *Land Transfer Tax Act*, being chapter 231 of the Revised Statutes of Ontario, 1980, is amended by inserting after “therein” in the second line “a structure to be constructed on land as part of an arrangement relating to a conveyance of land”.

(2) Subsection 1 (1) of the said Act, as amended by the Statutes of Ontario, 1983, chapter 20, section 1, is further amended by relettering clause (ja) as clause (jb) and by adding thereto the following clause:

(ja) “single family residence” means,

(i) a unit or proposed unit under the *Condominium Act*, or

R.S.O. 1980,
c. 84

(ii) a structure or part of a structure,

that is designed for occupation as the residence of one family, including dependants or domestic employees of a member of the family, whether or not rent is paid for the occupation of any part of such residence, and whether or not the land on which the residence is situated is zoned for residential use, and “single family residence” includes any such residence that is to be constructed as part of the arrangement relating to a conveyance of land, but does not include any such residence constructed or to be constructed on agricultural land where the transferor with respect to the land conveyed meets the eligibility requirements for a farm tax reduction rebate contained in clause 4 (b) or (c) of Ontario Regulation 716/83 made under the *Ministry of Agriculture and Food Act*.

R.S.O. 1980,
c. 270

2.—(1) Subsection 2 (1) of the said Act is repealed and the following substituted therefor:

Tax imposed

- (1) Every person who tenders for registration in Ontario,
- (a) a conveyance whereby any land is conveyed to or in trust for any transferee who is not a non-resident person; or
 - (b) a conveyance that is a conveyance only of unrestricted land and upon which is endorsed, or to which is attached, a certification by the Minister, or by some person authorized by the Minister in writing to make the certification, that all of the land being conveyed is unrestricted land,

shall, before the conveyance is registered, pay a tax computed,

- (c) at the rate of one-half of 1 per cent of the value of the consideration for the conveyance up to and including \$55,000, and at the rate of 1 per cent upon the remainder of the value of the consideration; plus
- (d) where the value of the consideration for the conveyance exceeds \$250,000 and the conveyance is a conveyance of land that contains at least one and not more than two single family residences, at the rates described in clause (c) plus an additional tax of one-half of 1 per cent of the amount by which the value of the consideration exceeds \$250,000.

Apportionment
of
consideration

- (1a) Where, in respect of a conveyance of land,
- (a) subsection (2) does not apply;
 - (b) the value of the consideration for the conveyance exceeds \$250,000; and
 - (c) a part of the land being conveyed is not used for residential purposes,

the Minister may, to the extent that he considers it practicable, determine what amount of the value of the consideration for the conveyance is reasonably attributable to the land used in connection with a single family residence, and the person tendering the conveyance for registration is, notwithstanding subsection (1), liable to the additional tax of one-half of 1 per cent only upon the amount by which the value of the consider-

ation determined by the Minister to be attributable to land used in connection with a single family residence exceeds \$250,000.

(2) Subsection 2 (6) of the said Act is repealed and the following substituted therefor:

(6) Where only a part of the land being conveyed is unrestricted land and the conveyance is to or in trust for any non-resident person, the Minister may, to the extent that he considers it practicable, determine what amount of the value of the consideration for the conveyance is reasonably attributable to the unrestricted land being conveyed, and the person tendering the conveyance for registration is, notwithstanding subsection (1) or (2), liable to a tax computed at the rate of 1 per cent of such amount so determined plus any amount of tax required to be calculated under clause (1) (d), or subsection (1a) on the amount so determined, whichever is the less, and is liable to a tax computed at the rate of 20 per cent of the amount of the value of the consideration for the conveyance that is determined by the Minister not to be reasonably attributable to the unrestricted land being conveyed.

Apportionment
of
consideration

3. Subsection 4 (1) of the said Act, as amended by the Statutes of Ontario, 1983, chapter 20, section 3, is repealed and the following substituted therefor:

(1) There shall be filed with the collector and attached by him to the conveyance to which it relates an affidavit in the prescribed form setting out the true value of the consideration for the conveyance, the true amount in cash and the value of any property or security included in the value of the consideration, the amount or value of any lien or encumbrance subject to which the conveyance was made, and such affidavit shall state whether the transferee to whom the land is being conveyed is a non-resident person or the trustee for a non-resident person and, where the value of the consideration exceeds \$250,000, whether the land being conveyed contains at least one and not more than two single family residences and shall contain such other information as the Minister may prescribe to be disclosed.

Contents of
affidavit
as to
consideration

4. Subsection 6 (1) of the said Act is amended by inserting after "non-resident person" in the sixth line "or falsely states whether the land being conveyed contains at least one and not more than two single family residences".

5.—(1) Section 7 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 20, section 5, is further amended by adding thereto the following subsection:

Idem

R.S.O. 1980,
c. 270

(1a) Where a person has paid an amount under this Act as tax on a conveyance of land that contains a single family residence and that single family residence ceases to be a single family residence because the transferee meets the eligibility requirements for a farm tax reduction rebate contained in clause 4 (b) or (c) of Ontario Regulation 716/83 made under the *Ministry of Agriculture and Food Act*, the Minister may, upon receipt of satisfactory evidence that the transferee meets those requirements, authorize the Treasurer to refund to the transferee the tax paid by the transferee calculated under clause 2 (1) (d), but no refund shall be made unless it is applied for within three years after the date of registration of the conveyance.

(2) Clause 7 (2) (a) of the said Act is amended by inserting after "subsection 2 (1)" in the second line "or (1a)".

6. Subsection 11 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 20, section 6, is amended by striking out "ninety" in the third line and inserting in lieu thereof "180".

7.—(1) Subsection 12 (5) of the said Act is repealed and the following substituted therefor:

Reply to
notice of
appeal

(5) The Minister shall with all due dispatch serve on the appellant and file with the Supreme Court a reply to the notice of appeal admitting or denying the facts alleged and containing a statement of such allegations of fact and of such statutory provisions and reasons as the Minister intends to rely on, and where the Minister fails to serve the reply within 180 days from the date of service upon the Minister of the notice under subsection (2), the appellant may, upon twenty-one days notice to the Minister, apply to a judge of the Supreme Court for an order requiring the reply to be served within such time as the judge shall order, and the judge may, if the judge considers it proper in the circumstances, also order that, upon the failure of the Minister to serve the reply in the time specified by the order, the assessment or notice of disallowance with respect to which the appeal is made shall be vacated and any tax pursuant to such assessment shall be repaid to the appellant or the refund disallowed be paid to the appellant, but nothing in this section revives an appeal that is void or affects a statement of disallowance or assessment that has become valid and binding.

(2) Subsection 12 (10) of the said Act is repealed and the following substituted therefor:

(10) The time within which a notice of objection or a notice of appeal is to be served may be extended by the Minister if application for extension is made, Extension of time

(a) in respect of a notice of objection under subsection 11 (1),

(i) before the expiration of the time allowed under that subsection for service of notice of the objection, or

(ii) within one year from the day of mailing or delivery by personal service of the notice of assessment or statement of disallowance that is the subject of the objection where the person wishing to make objection furnishes to the Minister an explanation satisfactory to the Minister that explains why the notice of objection could not be served in accordance with subsection 11 (1); or

(b) in respect of a notice of appeal, before the expiration of the time allowed under subsection (1) of this section for the service of the notice of appeal.

8. Section 13 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 20, section 8, is further amended by adding thereto the following subsection:

(1aa) Where the Minister considers it advisable to do so, the Minister may accept security for the payment of taxes in any form that the Minister considers satisfactory. Security for tax

9.—(1) Subsection 16 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 20, section 10, is amended by inserting after “subsection 2 (1)” in the forty-second line “or (1a)”.

(2) Subsection 16 (2) of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 20, section 10, is amended by inserting after “subsection 2 (1)” in the fifth line “or (1a)”.

(3) Subsection 16 (8) of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 20, section 10, is amended by adding at the end thereof “or (1a)”.

10.—(1) This Act, except section 6 and subsection 7 (2), comes into force on the day following the day it receives Royal Assent and applies to every conveyance tendered for registra- Commence-
ment
and
application

tion on or after that day notwithstanding that a conveyance in registerable form was executed and delivered prior to that day.

Idem

(2) Section 6 and subsection 7 (2) shall be deemed to have come into force on the 15th day of February, 1984.

Short title

11. The short title of this Act is the *Land Transfer Tax Amendment Act, 1985*.

Bill 48

*(Chapter 21
Statutes of Ontario, 1985)*

An Act to amend the Land Transfer Tax Act

The Hon. R. Nixon
Minister of Revenue



<i>1st Reading</i>	October 24th, 1985
<i>2nd Reading</i>	November 7th, 1985
<i>3rd Reading</i>	December 20th, 1985
<i>Royal Assent</i>	December 31st, 1985

Bill 48

1985

An Act to amend the Land Transfer Tax Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Clause 1 (1) (d) of the *Land Transfer Tax Act*, being chapter 231 of the Revised Statutes of Ontario, 1980, is amended by inserting after “therein” in the second line “a structure to be constructed on land as part of an arrangement relating to a conveyance of land”.

(2) Subsection 1 (1) of the said Act, as amended by the Statutes of Ontario, 1983, chapter 20, section 1, is further amended by relettering clause (ja) as clause (jb) and by adding thereto the following clause:

(ja) “single family residence” means,

(i) a unit or proposed unit under the *Condominium Act*, or R.S.O. 1980,
c. 84

(ii) a structure or part of a structure,

that is designed for occupation as the residence of one family, including dependants or domestic employees of a member of the family, whether or not rent is paid for the occupation of any part of such residence, and whether or not the land on which the residence is situated is zoned for residential use, and “single family residence” includes any such residence that is to be constructed as part of the arrangement relating to a conveyance of land, but does not include any such residence constructed or to be constructed on agricultural land where the transferor with respect to the land conveyed meets the eligibility requirements for a farm tax reduction rebate contained in clause 4 (b) or (c) of Ontario Regulation 716/83 made under the *Ministry of Agriculture and Food Act*.

R.S.O. 1980,
c. 270

2.—(1) Subsection 2 (1) of the said Act is repealed and the following substituted therefor:

Tax imposed

(1) Every person who tenders for registration in Ontario,

- (a) a conveyance whereby any land is conveyed to or in trust for any transferee who is not a non-resident person; or
- (b) a conveyance that is a conveyance only of unrestricted land and upon which is endorsed, or to which is attached, a certification by the Minister, or by some person authorized by the Minister in writing to make the certification, that all of the land being conveyed is unrestricted land,

shall, before the conveyance is registered, pay a tax computed,

- (c) at the rate of one-half of 1 per cent of the value of the consideration for the conveyance up to and including \$55,000, and at the rate of 1 per cent upon the remainder of the value of the consideration; plus
- (d) where the value of the consideration for the conveyance exceeds \$250,000 and the conveyance is a conveyance of land that contains at least one and not more than two single family residences, at the rates described in clause (c) plus an additional tax of one-half of 1 per cent of the amount by which the value of the consideration exceeds \$250,000.

Apportionment
of
consideration

(1a) Where, in respect of a conveyance of land,

- (a) subsection (2) does not apply;
- (b) the value of the consideration for the conveyance exceeds \$250,000; and
- (c) a part of the land being conveyed is not used for residential purposes,

the Minister may, to the extent that he considers it practicable, determine what amount of the value of the consideration for the conveyance is reasonably attributable to the land used in connection with a single family residence, and the person tendering the conveyance for registration is, notwithstanding subsection (1), liable to the additional tax of one-half of 1 per cent only upon the amount by which the value of the consider-

ation determined by the Minister to be attributable to land used in connection with a single family residence exceeds \$250,000.

(2) Subsection 2 (6) of the said Act is repealed and the following substituted therefor:

(6) Where only a part of the land being conveyed is unrestricted land and the conveyance is to or in trust for any non-resident person, the Minister may, to the extent that he considers it practicable, determine what amount of the value of the consideration for the conveyance is reasonably attributable to the unrestricted land being conveyed, and the person tendering the conveyance for registration is, notwithstanding subsection (1) or (2), liable to a tax computed at the rate of 1 per cent of such amount so determined plus any amount of tax required to be calculated under clause (1) (d), or subsection (1a) on the amount so determined, whichever is the less, and is liable to a tax computed at the rate of 20 per cent of the amount of the value of the consideration for the conveyance that is determined by the Minister not to be reasonably attributable to the unrestricted land being conveyed.

Apportionment
of
consideration

3. Subsection 4 (1) of the said Act, as amended by the Statutes of Ontario, 1983, chapter 20, section 3, is repealed and the following substituted therefor:

(1) There shall be filed with the collector and attached by him to the conveyance to which it relates an affidavit in the prescribed form setting out the true value of the consideration for the conveyance, the true amount in cash and the value of any property or security included in the value of the consideration, the amount or value of any lien or encumbrance subject to which the conveyance was made, and such affidavit shall state whether the transferee to whom the land is being conveyed is a non-resident person or the trustee for a non-resident person and, where the value of the consideration exceeds \$250,000, whether the land being conveyed contains at least one and not more than two single family residences and shall contain such other information as the Minister may prescribe to be disclosed.

Contents of
affidavit
as to
consideration

4. Subsection 6 (1) of the said Act is amended by inserting after “non-resident person” in the sixth line “or falsely states whether the land being conveyed contains at least one and not more than two single family residences”.

5.—(1) Section 7 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 20, section 5, is further amended by adding thereto the following subsection:

Idem

R.S.O. 1980,
c. 270

(1a) Where a person has paid an amount under this Act as tax on a conveyance of land that contains a single family residence and that single family residence ceases to be a single family residence because the transferee meets the eligibility requirements for a farm tax reduction rebate contained in clause 4 (b) or (c) of Ontario Regulation 716/83 made under the *Ministry of Agriculture and Food Act*, the Minister may, upon receipt of satisfactory evidence that the transferee meets those requirements, authorize the Treasurer to refund to the transferee the tax paid by the transferee calculated under clause 2 (1) (d), but no refund shall be made unless it is applied for within three years after the date of registration of the conveyance.

(2) Clause 7 (2) (a) of the said Act is amended by inserting after "subsection 2 (1)" in the second line "or (1a)".

6. Subsection 11 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 20, section 6, is amended by striking out "ninety" in the third line and inserting in lieu thereof "180".

7.—(1) Subsection 12 (5) of the said Act is repealed and the following substituted therefor:

Reply to
notice of
appeal

(5) The Minister shall with all due dispatch serve on the appellant and file with the Supreme Court a reply to the notice of appeal admitting or denying the facts alleged and containing a statement of such allegations of fact and of such statutory provisions and reasons as the Minister intends to rely on, and where the Minister fails to serve the reply within 180 days from the date of service upon the Minister of the notice under subsection (2), the appellant may, upon twenty-one days notice to the Minister, apply to a judge of the Supreme Court for an order requiring the reply to be served within such time as the judge shall order, and the judge may, if the judge considers it proper in the circumstances, also order that, upon the failure of the Minister to serve the reply in the time specified by the order, the assessment or notice of disallowance with respect to which the appeal is made shall be vacated and any tax pursuant to such assessment shall be repaid to the appellant or the refund disallowed be paid to the appellant, but nothing in this section revives an appeal that is void or affects a statement of disallowance or assessment that has become valid and binding.

(2) Subsection 12 (10) of the said Act is repealed and the following substituted therefor:

(10) The time within which a notice of objection or a notice of appeal is to be served may be extended by the Minister if application for extension is made, Extension of time

(a) in respect of a notice of objection under subsection 11 (1),

(i) before the expiration of the time allowed under that subsection for service of notice of the objection, or

(ii) within one year from the day of mailing or delivery by personal service of the notice of assessment or statement of disallowance that is the subject of the objection where the person wishing to make objection furnishes to the Minister an explanation satisfactory to the Minister that explains why the notice of objection could not be served in accordance with subsection 11 (1); or

(b) in respect of a notice of appeal, before the expiration of the time allowed under subsection (1) of this section for the service of the notice of appeal.

8. Section 13 of the said Act, as amended by the Statutes of Ontario, 1983, chapter 20, section 8, is further amended by adding thereto the following subsection:

(1aa) Where the Minister considers it advisable to do so, the Minister may accept security for the payment of taxes in any form that the Minister considers satisfactory. Security for tax

9.—(1) Subsection 16 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 20, section 10, is amended by inserting after “subsection 2 (1)” in the forty-second line “or (1a)”.

(2) Subsection 16 (2) of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 20, section 10, is amended by inserting after “subsection 2 (1)” in the fifth line “or (1a)”.

(3) Subsection 16 (8) of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 20, section 10, is amended by adding at the end thereof “or (1a)”.

10.—(1) This Act, except section 6 and subsection 7 (2), comes into force on the day following the day it receives Royal Assent and applies to every conveyance tendered for registra- Commencement and application

tion on or after that day notwithstanding that a conveyance in registerable form was executed and delivered prior to that day.

Idem

(2) Section 6 and subsection 7 (2) shall be deemed to have come into force on the 15th day of February, 1984.

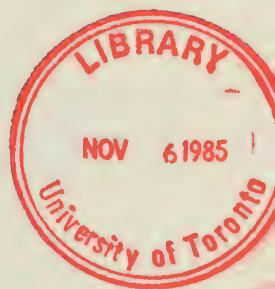
Short title

11. The short title of this Act is the *Land Transfer Tax Amendment Act, 1985*.

Bill 49

An Act to amend the Tobacco Tax Act

The Hon. R. Nixon
Minister of Revenue



1st Reading October 24th, 1985
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTES

The purpose of the Bill is,

- (a) to replace the existing *ad valorem* tax on cigarettes and tobacco, other than cigarettes or cigars, with a unitary tax at the rate of 2.7 cents per cigarette and 1.5 cents per gram of tobacco;
- (b) to provide a method of objection and appeal where a taxpayer's claim for a refund of tax is denied;
- (c) to extend the time for the taxpayer to object to an assessment and to permit the Minister to extend that time where special circumstances prevent the taxpayer from meeting that limit; and
- (d) to withdraw the special search warrant provisions of the Act; the search warrant provisions of the *Provincial Offences Act* will be utilized in their stead.

SECTION 1. Clauses 1 (ga) and (gb) which define the taxable price per cigarette and the taxable price per gram of tobacco as a basis for calculating the *ad valorem* tax are no longer required. Clauses 1 (ga) and (gb) now read as follows:

- (ga) "*taxable price per cigarette*" means the price per cigarette from time to time prescribed by regulation by the Minister as the taxable price per cigarette for such period of time as the Minister may prescribe, and in determining the taxable price per cigarette, the Minister shall use the median price obtained by him from such periodic sampling as he considers appropriate of the retail prices (excluding the tax imposed by this Act) of packages of twenty cigarettes in such part or parts of Ontario as he shall direct a sample to be taken, provided that no change in the taxable price per cigarette from time to time in effect shall come into force until at least two days after the filing of a regulation prescribing a different taxable price per cigarette;
- (gb) "*taxable price per gram*" of tobacco, other than cigarettes or cigars, means the price per gram of such tobacco from time to time prescribed by regulation by the Minister as the taxable price per gram of such tobacco for such period of time as the Minister may prescribe, and in determining the taxable price per gram, the Minister shall use the median price obtained by him from such periodic sampling as he considers appropriate of the retail prices (excluding the tax imposed by this Act) of 50-gram packages of tobacco, other than cigarettes or cigars, in such part or parts of Ontario as he shall direct a sample to be taken, provided that no change in the taxable price per gram from time to time in effect shall come into force until at least two days after the filing of a regulation prescribing a different taxable price per gram.

SECTION 2. This section replaces the existing *ad valorem* tax on cigarettes and tobacco, other than cigarettes and cigars, with a unitary tax at the rate of 2.7 cents per cigarette and 1.5 cents per gram of tobacco. Subsections 2 (1) and (1a) now read as follows:

- (1) Every consumer shall pay to Her Majesty in right of Ontario a tax at the rate of,
 - (a) 45 per cent of the taxable price per cigarette on every cigarette purchased by him;
 - (b) 45 per cent of the taxable price per gram on every gram or part thereof of any tobacco, other than cigarettes or cigars, purchased by him; and
 - (c) 45 per cent of the price at retail of every cigar that is purchased by him, provided that where the application of such rate of tax produces a fraction of a cent, the fraction shall be counted as one full cent.

(1a) The tax imposed by this Act shall not be increased or reduced by reason of the fact that the price or consideration paid or given by a consumer for cigarettes or for tobacco, other than cigarettes or cigars, is different from the taxable price per cigarette or from the taxable price per gram, as the case may be.

SECTION 3.—Subsection 1. This subsection clarifies the method by which assessments for penalties and for excessive refunds taken are made by the Minister. Subsection 10 (1) now reads as follows:

(1) The Minister may, at any time he considers reasonable, assess or reassess any tax that any person, as agent of the Minister, has collected and has failed to remit and any tax, interest or penalty, as the case may be, payable by him for which he has not accounted.

Subsection 2. The subsection added provides for the issuance of, and delivery to, the claimant of a statement of disallowance where a refund claim is disallowed. This section relates to sections 4 and 5 which will provide a right of objection to, and appeal from, the disallowance of a claim for refund.

SECTION 4. The amendments to subsections 12 (1) and (3) of the Act permit objection to be made by a taxpayer to a disallowance of a claim for refund in the same manner as objection may be made to the making of an assessment for tax. In addition, the time for making such objection is enlarged from 90 days to 180 days from the serving of the notice of assessment or, now, of the statement of disallowance.

Subsections 12 (1) and (3) of the Act as they will now read are set out below showing underlined the changes being made:

(1) Where a person objects to an assessment of tax, interest or penalty or the disallowance of a refund made under section 10, the person may, within 180 days from the day of mailing or delivery by personal service of the notice of assessment or statement of disallowance, serve on the Minister a notice of objection in duplicate in the form prescribed by the regulations setting out the reasons for the objection and all relevant facts.

(3) Upon receipt of a notice of objection, the Minister shall with all due dispatch reconsider the assessment or disallowance objected to and vacate, confirm or vary the assessment or statement of disallowance or reassess or serve a fresh statement of disallowance, and the Minister shall thereupon notify the person who has made the objection of his or her action by registered mail.

SECTION 5.—Subsection 1. The amendment will allow an appeal to be taken from the disallowance of a claim for refund in the same manner as an appeal may be taken from an assessment.

Subsection 13 (1) of the Act as it will read after the amendment is set out below showing underlined the words that are added:

(1) After the Minister has given the notification required by subsection 12 (3), a person who has served notice of objection under section 12 may appeal to the Supreme Court to have the assessment or statement of disallowance vacated or varied or reassessed, but no appeal under this section shall be instituted after the expiration of ninety days from the day notice has been mailed to such person under subsection 12 (3).

Subsection 2. The re-enactment of subsection 13 (5) of the Act will limit the time provided for the Minister to reply to a notice of appeal to 180 days and provide a mechanism for having the assessment vacated or the refund allowed if the limitation is not met.

Subsection 13 (5) now reads as follows:

(5) After the service on him of a notice of appeal under this section, the Minister shall with all due dispatch serve on the person appealing and file in the Supreme Court where the notice of appeal was filed a reply to the notice of appeal admitting or denying the facts alleged and containing a statement of such further allegations of fact and of such statutory provisions and reasons as he intends to rely on.

Subsection 3. The re-enactment of subsection 13 (7) of the Act specifically directs the Minister to take such action as is required to carry out the order made by the court on an appeal. Subsection 13 (7) now reads as follows:

(7) The court may dispose of the appeal by,

(a) dismissing it;

(b) allowing it; or

(c) allowing it, and

(i) vacating the assessment,

(ii) varying the assessment,

(iii) restoring the original assessment, or

(iv) referring the assessment back to the Minister for reconsideration and reassessment.

Subsection 4. This subsection provides that a notice of disallowance shall only be vacated or varied where it is wrong in substance and not for a technical or procedural irregularity. Subsection 13 (10) of the Act as it will read after the amendment is set out below showing underlined the words that are added:

(10) No assessment or notice of disallowance shall be vacated or varied on appeal by reason only of an irregularity, informality, omission or error on the part of any person in the observance of any directory provision of this Act.

Subsection 5. The re-enactment of subsection 13 (11) of the Act authorizes the Minister to extend the time allowed for service of a notice of objection on application made after the initial time limit has expired, where the Minister is satisfied as to the reason that time limit was not met.

Subsection 13 (11) now reads as follows:

(11) The time within which a notice of objection under subsection 12 (1) or a notice of appeal under subsection (1) of this section is to be served may be extended by the Minister if application for extension is made before expiration of the time for service of the notice of objection or notice of appeal, as the case may be.

SECTION 6.—Subsection 1. The repeal of the subsection removes the special search warrant powers under the Act; the search warrant provisions of the *Provincial Offences Act* will be utilized in their stead. Subsection 14 (3) now reads as follows:

(3) The Minister may, for any purpose related to the administration or enforcement of this Act and the regulations, with the approval of a judge of the Supreme Court, which approval the judge is hereby empowered to give upon an ex parte application, authorize in writing any officer of the Ministry of Revenue, together with such members of the Ontario Provincial Police Force or other peace officers as he calls upon to assist him and such other persons as are named therein, to enter and search, if necessary by force, any building, receptacle or place for documents, books, records, papers or things that may afford evidence as to the contravention of any provision of this Act or the regulations, and to

seize and to take away any such documents, books, records, papers or things and retain them until they are produced in any court proceedings.

Subsection 2. The amendment will provide for a dealer to make a complete inventory of all tobacco in his possession. Subsection 14 (6) now reads as follows:

(6) The Minister at any time for any purpose related to the administration or enforcement of this Act and the regulations may require a dealer to complete an inventory report showing all tobacco in his possession in respect of which the tax imposed by this Act has not been paid.

SECTION 7. The Minister is specifically authorized to accept security for the payment of tax.

SECTION 8. Clauses 28 (2) (e) and (f) of the Act which authorize the Minister to make regulations prescribing the taxable price per cigarette and per gram of tobacco, other than cigarettes or cigars, and the tax per cigarette and the tax per gram of such tobacco are no longer required. Clauses 28 (2) (e) and (f) now read as follows:

- (e) prescribing the taxable price per cigarette or taxable price per gram to be in effect from time to time for cigarettes or for tobacco, other than cigarettes or cigars, and prescribing the period of time for which taxable price per cigarette or taxable price per gram shall be in effect;*
- (f) fixing to the nearest hundredth of a cent the tax per cigarette or per gram of tobacco, other than cigarettes or cigars, to be paid under this Act as a result of the prescribing from time to time of a taxable price per cigarette or taxable price per gram in accordance with clause (e).*

Bill 49**1985****An Act to amend the Tobacco Tax Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Clauses 1 (ga) and (gb) of the *Tobacco Tax Act*, being chapter 502 of the Revised Statutes of Ontario, 1980, as enacted by the Statutes of Ontario, 1981, chapter 4, section 1, are repealed.

2.—(1) Subsection 2 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1982, chapter 17, section 1 and amended by the Statutes of Ontario, 1983, chapter 25, section 1, is repealed and the following substituted therefor:

(1) Every consumer shall pay to the Treasurer a tax at the rate of, Tax on consumers of tobacco

- (a) 2.7 cents on every cigarette purchased by the consumer;
- (b) 1.5 cents per gram on every gram or part thereof of any tobacco, other than cigarettes or cigars, purchased by the consumer; and
- (c) 45 per cent of the price at retail of every cigar that is purchased by the consumer, provided that where the application of such rate of tax produces a fraction of a cent, the fraction shall be counted as one full cent.

(2) Subsection 2 (1a) of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 4, section 2, is repealed.

3.—(1) Subsection 10 (1) of the said Act is repealed and the following substituted therefor:

(1) The Minister may, at any time the Minister considers reasonable, assess or reassess, Assessment

- (a) any tax that any person, as agent of the Minister, has collected and has failed to remit;
- (b) any tax, interest or penalty payable by any person under this Act or the regulations; and
- (c) any amount deemed to be tax under section 27.

(2) Section 10 of the said Act is amended by adding thereto the following subsection:

Disallowance
of refund

(2a) Where a person has, in accordance with this Act and the regulations, applied for a refund under this Act or the regulations, and the claim is in whole or in part refused, the Minister shall cause to be issued a statement of disallowance and the statement shall specify the amount of the disallowance and the reasons therefor and the statement of disallowance shall be served in the same manner as a notice of assessment under subsection (3).

4.—(1) Subsection 12 (1) of the said Act is repealed and the following substituted therefor:

Notice of
objection

(1) Where a person objects to an assessment of tax, interest or penalty or the disallowance of a refund under section 10, the person may, within 180 days from the day of mailing or delivery by personal service of the notice of assessment or statement of disallowance, serve on the Minister a notice of objection in duplicate in the form prescribed by the regulations setting out the reasons for the objection and all relevant facts.

(2) Subsection 12 (3) of the said Act is repealed and the following substituted therefor:

Minister to
reconsider

(3) Upon receipt of a notice of objection, the Minister shall with all due dispatch reconsider the assessment or disallowance objected to and vacate, confirm or vary the assessment or disallowance or reassess or serve a fresh statement of disallowance, and the Minister shall thereupon notify the person making the objection of his or her action by registered mail.

5.—(1) Subsection 13 (1) of the said Act is amended by inserting after “assessment” in the fourth line “or statement of disallowance”.

(2) Subsection 13 (5) of the said Act is repealed and the following substituted therefor:

(5) The Minister shall with all due dispatch serve on the appellant and file with the Supreme Court a reply to the notice of appeal admitting or denying the facts alleged and containing a statement of such allegations of fact and of such statutory provisions and reasons as the Minister intends to rely on, and where the Minister fails to serve the reply within 180 days from the date of service upon the Minister of the notice under subsection (2), the appellant may, upon twenty-one days notice to the Minister, apply to a judge of the Supreme Court for an order requiring the reply to be served within such time as the judge shall order, and the judge may, if the judge considers it proper in the circumstances, also order that, upon the failure of the Minister to serve the reply in the time specified by the order, the assessment or notice of disallowance with respect to which the appeal is made shall be vacated and any tax pursuant to such assessment shall be repaid to the appellant or the refund disallowed be paid to the appellant, but nothing in this section revives an appeal that is void or affects a statement of disallowance or assessment that has become valid and binding.

Reply to
notice of
appeal

(3) Subsection 13 (7) of the said Act is repealed and the following substituted therefor:

(7) The court may dispose of the appeal by such order as it considers just and the Minister shall, subject to the final decision of any court to which the order is appealed, vacate or vary, where necessary, the assessment or statement of disallowance so as to carry out the final order of the court.

Disposition
of appeal

(4) Subsection 13 (10) of the said Act is amended by inserting after "assessment" in the first line "or notice of disallowance".

(5) Subsection 13 (11) of the said Act is repealed and the following substituted therefor:

(11) The time within which a notice of objection or a notice of appeal is to be served may be extended by the Minister if application for extension is made,

Extension
of time

- (a) in respect of a notice of objection under subsection 12 (1),
 - (i) before the expiration of the time allowed under that subsection for service of notice of the objection, or
 - (ii) within one year from the day of mailing or delivery by personal service of the notice of

- (a) any tax that any person, as agent of the Minister, has collected and has failed to remit;
- (b) any tax, interest or penalty payable by any person under this Act or the regulations; and
- (c) any amount deemed to be tax under section 27.

(2) Section 10 of the said Act is amended by adding thereto the following subsection:

Disallowance
of refund

(2a) Where a person has, in accordance with this Act and the regulations, applied for a refund under this Act or the regulations, and the claim is in whole or in part refused, the Minister shall cause to be issued a statement of disallowance and the statement shall specify the amount of the disallowance and the reasons therefor and the statement of disallowance shall be served in the same manner as a notice of assessment under subsection (3).

4.—(1) Subsection 12 (1) of the said Act is repealed and the following substituted therefor:

Notice of
objection

(1) Where a person objects to an assessment of tax, interest or penalty or the disallowance of a refund under section 10, the person may, within 180 days from the day of mailing or delivery by personal service of the notice of assessment or statement of disallowance, serve on the Minister a notice of objection in duplicate in the form prescribed by the regulations setting out the reasons for the objection and all relevant facts.

(2) Subsection 12 (3) of the said Act is repealed and the following substituted therefor:

Minister to
reconsider

(3) Upon receipt of a notice of objection, the Minister shall with all due dispatch reconsider the assessment or disallowance objected to and vacate, confirm or vary the assessment or disallowance or reassess or serve a fresh statement of disallowance, and the Minister shall thereupon notify the person making the objection of his or her action by registered mail.

5.—(1) Subsection 13 (1) of the said Act is amended by inserting after “assessment” in the fourth line “or statement of disallowance”.

(2) Subsection 13 (5) of the said Act is repealed and the following substituted therefor:

(5) The Minister shall with all due dispatch serve on the appellant and file with the Supreme Court a reply to the notice of appeal admitting or denying the facts alleged and containing a statement of such allegations of fact and of such statutory provisions and reasons as the Minister intends to rely on, and where the Minister fails to serve the reply within 180 days from the date of service upon the Minister of the notice under subsection (2), the appellant may, upon twenty-one days notice to the Minister, apply to a judge of the Supreme Court for an order requiring the reply to be served within such time as the judge shall order, and the judge may, if the judge considers it proper in the circumstances, also order that, upon the failure of the Minister to serve the reply in the time specified by the order, the assessment or notice of disallowance with respect to which the appeal is made shall be vacated and any tax pursuant to such assessment shall be repaid to the appellant or the refund disallowed be paid to the appellant, but nothing in this section revives an appeal that is void or affects a statement of disallowance or assessment that has become valid and binding.

Reply to
notice of
appeal

(3) Subsection 13 (7) of the said Act is repealed and the following substituted therefor:

(7) The court may dispose of the appeal by such order as it considers just and the Minister shall, subject to the final decision of any court to which the order is appealed, vacate or vary, where necessary, the assessment or statement of disallowance so as to carry out the final order of the court.

Disposition
of appeal

(4) Subsection 13 (10) of the said Act is amended by inserting after "assessment" in the first line "or notice of disallowance".

(5) Subsection 13 (11) of the said Act is repealed and the following substituted therefor:

(11) The time within which a notice of objection or a notice of appeal is to be served may be extended by the Minister if application for extension is made,

Extension
of time

- (a) in respect of a notice of objection under subsection 12 (1),
 - (i) before the expiration of the time allowed under that subsection for service of notice of the objection, or
 - (ii) within one year from the day of mailing or delivery by personal service of the notice of

assessment or statement of disallowance that is the subject of the objection where the person wishing to make objection furnishes to the Minister an explanation satisfactory to the Minister that explains why the notice of objection could not be served in accordance with subsection 12 (1); or

- (b) in respect of a notice of appeal, before the expiration of the time allowed under subsection (1) of this section for the service of the notice of appeal.

6.—(1) Subsection 14 (3) of the said Act is repealed.

(2) Subsection 14 (6) of the said Act is amended by striking out “in respect of which the tax imposed by this Act has not been paid” in the fourth and fifth lines.

7. Section 16 of the said Act is amended by adding thereto the following subsection:

Security
for tax

(1a) Where the Minister considers it advisable to do so, the Minister may accept security for the payment of taxes in any form the Minister considers appropriate.

8. Clauses 28 (2) (e) and (f) of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 4, section 6, are repealed.

Commence-
ment

9.—(1) This Act, except subsections 4 (1) and 5 (5), comes into force on the day following the day it receives Royal Assent.

Idem

(2) Subsections 4 (1) and 5 (5) shall be deemed to have come into force on the 15th day of February, 1984.

Short title

10. The short title of this Act is the *Tobacco Tax Amendment Act, 1985*.

Bill 49

*(Chapter 22
Statutes of Ontario, 1985)*

An Act to amend the Tobacco Tax Act

The Hon. R. Nixon
Minister of Revenue



<i>1st Reading</i>	October 24th, 1985
<i>2nd Reading</i>	November 8th, 1985
<i>3rd Reading</i>	December 20th, 1985
<i>Royal Assent</i>	December 31st, 1985

Bill 49

1985

An Act to amend the Tobacco Tax Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Clauses 1 (ga) and (gb) of the *Tobacco Tax Act*, being chapter 502 of the Revised Statutes of Ontario, 1980, as enacted by the Statutes of Ontario, 1981, chapter 4, section 1, are repealed.

2.—(1) Subsection 2 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1982, chapter 17, section 1 and amended by the Statutes of Ontario, 1983, chapter 25, section 1, is repealed and the following substituted therefor:

(1) Every consumer shall pay to the Treasurer a tax at the rate of, Tax on
consumers of
tobacco

- (a) 2.7 cents on every cigarette purchased by the consumer;
- (b) 1.5 cents per gram on every gram or part thereof of any tobacco, other than cigarettes or cigars, purchased by the consumer; and
- (c) 45 per cent of the price at retail of every cigar that is purchased by the consumer, provided that where the application of such rate of tax produces a fraction of a cent, the fraction shall be counted as one full cent.

(2) Subsection 2 (1a) of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 4, section 2, is repealed.

3.—(1) Subsection 10 (1) of the said Act is repealed and the following substituted therefor:

(1) The Minister may, at any time the Minister considers Assessment
reasonable, assess or reassess,

- (a) any tax that any person, as agent of the Minister, has collected and has failed to remit;
- (b) any tax, interest or penalty payable by any person under this Act or the regulations; and
- (c) any amount deemed to be tax under section 27.

(2) Section 10 of the said Act is amended by adding thereto the following subsection:

Disallowance
of refund

(2a) Where a person has, in accordance with this Act and the regulations, applied for a refund under this Act or the regulations, and the claim is in whole or in part refused, the Minister shall cause to be issued a statement of disallowance and the statement shall specify the amount of the disallowance and the reasons therefor and the statement of disallowance shall be served in the same manner as a notice of assessment under subsection (3).

4.—(1) Subsection 12 (1) of the said Act is repealed and the following substituted therefor:

Notice of
objection

(1) Where a person objects to an assessment of tax, interest or penalty or the disallowance of a refund under section 10, the person may, within 180 days from the day of mailing or delivery by personal service of the notice of assessment or statement of disallowance, serve on the Minister a notice of objection in duplicate in the form prescribed by the regulations setting out the reasons for the objection and all relevant facts.

(2) Subsection 12 (3) of the said Act is repealed and the following substituted therefor:

Minister to
reconsider

(3) Upon receipt of a notice of objection, the Minister shall with all due dispatch reconsider the assessment or disallowance objected to and vacate, confirm or vary the assessment or disallowance or reassess or serve a fresh statement of disallowance, and the Minister shall thereupon notify the person making the objection of his or her action by registered mail.

5.—(1) Subsection 13 (1) of the said Act is amended by inserting after “assessment” in the fourth line “or statement of disallowance”.

(2) Subsection 13 (5) of the said Act is repealed and the following substituted therefor:

(5) The Minister shall with all due dispatch serve on the appellant and file with the Supreme Court a reply to the notice of appeal admitting or denying the facts alleged and containing a statement of such allegations of fact and of such statutory provisions and reasons as the Minister intends to rely on, and where the Minister fails to serve the reply within 180 days from the date of service upon the Minister of the notice under subsection (2), the appellant may, upon twenty-one days notice to the Minister, apply to a judge of the Supreme Court for an order requiring the reply to be served within such time as the judge shall order, and the judge may, if the judge considers it proper in the circumstances, also order that, upon the failure of the Minister to serve the reply in the time specified by the order, the assessment or notice of disallowance with respect to which the appeal is made shall be vacated and any tax pursuant to such assessment shall be repaid to the appellant or the refund disallowed be paid to the appellant, but nothing in this section revives an appeal that is void or affects a statement of disallowance or assessment that has become valid and binding.

Reply to
notice of
appeal

(3) Subsection 13 (7) of the said Act is repealed and the following substituted therefor:

(7) The court may dispose of the appeal by such order as it considers just and the Minister shall, subject to the final decision of any court to which the order is appealed, vacate or vary, where necessary, the assessment or statement of disallowance so as to carry out the final order of the court.

Disposition
of appeal

(4) Subsection 13 (10) of the said Act is amended by inserting after "assessment" in the first line "or notice of disallowance".

(5) Subsection 13 (11) of the said Act is repealed and the following substituted therefor:

(11) The time within which a notice of objection or a notice of appeal is to be served may be extended by the Minister if application for extension is made,

Extension
of time

- (a) in respect of a notice of objection under subsection 12 (1),
 - (i) before the expiration of the time allowed under that subsection for service of notice of the objection, or
 - (ii) within one year from the day of mailing or delivery by personal service of the notice of

assessment or statement of disallowance that is the subject of the objection where the person wishing to make objection furnishes to the Minister an explanation satisfactory to the Minister that explains why the notice of objection could not be served in accordance with subsection 12 (1); or

- (b) in respect of a notice of appeal, before the expiration of the time allowed under subsection (1) of this section for the service of the notice of appeal.

6.—(1) Subsection 14 (3) of the said Act is repealed.

(2) Subsection 14 (6) of the said Act is amended by striking out “in respect of which the tax imposed by this Act has not been paid” in the fourth and fifth lines.

7. Section 16 of the said Act is amended by adding thereto the following subsection:

Security
for tax

(1a) Where the Minister considers it advisable to do so, the Minister may accept security for the payment of taxes in any form the Minister considers appropriate.

8. Clauses 28 (2) (e) and (f) of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 4, section 6, are repealed.

Commence-
ment

9.—(1) This Act, except subsections 4 (1) and 5 (5), comes into force on the day following the day it receives Royal Assent.

Idem

(2) Subsections 4 (1) and 5 (5) shall be deemed to have come into force on the 15th day of February, 1984.

Short title

10. The short title of this Act is the *Tobacco Tax Amendment Act, 1985*.

Bill 50

An Act to amend the Fuel Tax Act, 1981

The Hon. R. Nixon
Minister of Revenue



1st Reading October 24th, 1985
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTES

The purpose of the Bill is,

- (a) to replace the existing *ad valorem* tax on fuel with a unitary tax at the rate of 9.9 cents per litre for general use and 3.1 cents per litre for fuel used in railway equipment;
- (b) to extend the time for the taxpayer to object to an assessment and to permit the Minister to extend that time where special circumstances prevent the taxpayer from meeting that limit; and
- (c) to withdraw the special search warrant provisions of the Act; the search warrant provisions of the *Provincial Offences Act* will be utilized in their stead.

SECTION 1. Clause 1 (t) which defines the taxable price per litre as a basis for calculating the *ad valorem* tax is no longer required. Clause 1 (t) now reads as follows:

- (t) "*taxable price per litre*" of fuel means the price per litre from time to time prescribed by the Minister as the taxable price per litre of fuel for such period of time as the Minister may prescribe, and in determining the taxable price per litre of fuel, the Minister shall use the median price obtained by him from such periodic sampling as he considers appropriate of the retail prices (excluding the tax imposed by this Act) of fuel in such part or parts of Ontario as he shall direct a sample to be taken, provided that no change in the taxable price per litre of fuel from time to time in effect shall come into force until at least two days after the filing of a regulation prescribing a different taxable price per litre of fuel.

SECTION 2. This section replaces the existing *ad valorem* tax on fuel with a unitary tax at the rate of 9.9 cents per litre for general use and 3.1 cents per litre for fuel used in railway equipment. Subsections 4 (1) and (2) now read as follows:

(1) Every collector, importer, registered consumer and purchaser shall pay to the Treasurer a tax at the rate of 27 per cent of the taxable price per litre on each litre of clear fuel received or used in Ontario by him to generate power in a motor vehicle other than railway equipment, and shall, on each litre of clear fuel received or used in Ontario by him to propel railway equipment on rails where such equipment is operated in connection with and as a part of a public transportation system, pay to the Treasurer a tax at the rate of 8.37 per cent of the taxable price per litre of such fuel.

(2) The tax imposed by this Act shall not be increased or reduced by reason of the fact that the price or consideration paid or given by a collector, importer, registered consumer or purchaser for clear fuel is different from the taxable price per litre of that fuel.

SECTION 3.—Subsection 1. The re-enactment extends the time allowed for the taxpayer to object to an assessment from ninety to 180 days. A typographical error is also corrected. Subsection 14 (1) now reads as follows:

(1) Where a person objects to an assessment or statement or disallowance under section 13, he may, within ninety days from the service of the assessment or statement of disallowance serve on the Minister a notice of objection in duplicate in the prescribed form setting out the reasons for the objection and all relevant facts.

Subsection 2. The re-enactment permits the Minister to extend the time allowed for the taxpayer to object to an assessment where circumstances prevent the taxpayer from meeting the time limit. The Minister is authorized to make such extension after the initial time for service of the notice of objection or appeal has expired. Subsection 14 (15) now reads as follows:

(15) The time within which a notice of objection under subsection (1) or a notice of appeal under subsection (5) is to be served may be extended by the Minister if application

for extension is made prior to the expiration of the time of service of that notice of objection or notice of appeal.

SECTION 4. The section expressly authorizes the Minister to accept security for the payment of tax.

SECTION 5. This re-enactment removes the special search warrant powers under the Act; the search warrant provisions of the *Provincial Offences Act* will be utilized in their stead. Subsection 18 (3) now reads as follows:

(3) The Minister may for any purpose related to the administration or enforcement of this Act or the regulations, with the approval of a judge of the Supreme Court, which approval the judge is hereby empowered to give upon ex parte application, authorize in writing any officer of the Ministry of Revenue, together with such members of the Ontario Provincial Police Force or other police officers as he calls upon to assist him and such other persons as are named therein to enter and search, if necessary by force, any building, receptacle or place, or any motor vehicle powered by fuel, for documents, books, records, papers or things that may afford evidence as to the contravention of any provision of this Act or the regulations and to seize and take away any such documents, books, records, papers or things and retain them until they are produced in any court proceedings.

SECTION 6. Clauses 30 (2) (b) and (c) of the Act which authorized the Minister to make regulations prescribing the taxable price per litre of fuel and the tax per litre of fuel are no longer required. Clauses 30 (2) (b) and (c) now read as follows:

- (b) prescribing the taxable price per litre of fuel to be in effect from time to time and the period of time for which such price shall be in effect;*
- (c) fixing to the nearest tenth of a cent the tax per litre of fuel to be paid under this Act as a result of the prescribing from time to time of a taxable price per litre in accordance with clause (b).*

Bill 50**1985****An Act to amend the Fuel Tax Act, 1981**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Clause 1 (t) of the *Fuel Tax Act, 1981*, being chapter 59, is repealed.

2. Subsections 4 (1) and (2) of the said Act are repealed and the following substituted therefor:

(1) Every collector, importer, registered consumer and purchaser shall pay to the Treasurer a tax at the rate of,

Tax on
clear fuel

(a) 9.9 cents per litre on each litre of clear fuel received or used by him or her in Ontario to generate power in a motor vehicle other than railway equipment operated on rails in connection with a public transportation system; and

(b) 3.1 cents per litre on each litre of clear fuel received or used by him or her in Ontario to propel railway equipment on rails where such equipment is operated in connection with and as part of a public transportation system.

3.—(1) Subsection 14 (1) of the said Act is repealed and the following substituted therefor:

(1) Where a person objects to an assessment or statement of disallowance under section 13, that person may, within 180 days from the service of the assessment or statement of disallowance, serve on the Minister a notice of objection in duplicate in the prescribed form setting out the reasons for the objection and all relevant facts.

Notice of
objection

(2) Subsection 14 (15) of the said Act is repealed and the following substituted therefor:

Extension

(15) The time within which a notice of objection or a notice of appeal is to be served may be extended by the Minister if application for extension is made,

- (a) in respect of a notice of objection under subsection (1),
 - (i) before the expiration of the time allowed under that subsection for service of notice of the objection, or
 - (ii) within one year from the day of mailing or delivery by personal service of the notice of assessment or statement of disallowance that is the subject of the objection where the person wishing to make objection furnishes to the Minister an explanation satisfactory to the Minister that explains why the notice of objection could not be served in accordance with subsection (1); or
- (b) in respect of a notice of appeal, before the expiration of the time allowed under subsection (5) for the service of the notice of appeal.

4. Section 17 of the said Act is amended by adding thereto the following subsection:

Security
for tax

(1a) Where the Minister considers it advisable to do so, the Minister may accept security for the payment of taxes in any manner the Minister considers appropriate.

5. Subsection 18 (3) of the said Act is repealed.

6. Clauses 30 (2) (b) and (c) of the said Act are repealed.

Commence-
ment

7.—(1) This Act, except section 3, comes into force on the day following the day it receives Royal Assent.

Idem

(2) Section 3 shall be deemed to have come into force on the 15th day of February, 1984.

Short title

8. The short title of this Act is the *Fuel Tax Amendment Act, 1985*.

Bill 50

*(Chapter 23
Statutes of Ontario, 1985)*

An Act to amend the Fuel Tax Act, 1981

The Hon. R. Nixon
Minister of Revenue



<i>1st Reading</i>	October 24th, 1985
<i>2nd Reading</i>	November 21st, 1985
<i>3rd Reading</i>	December 20th, 1985
<i>Royal Assent</i>	December 31st, 1985

Bill 50**1985****An Act to amend the Fuel Tax Act, 1981**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Clause 1 (t) of the *Fuel Tax Act, 1981*, being chapter 59, is repealed.

2. Subsections 4 (1) and (2) of the said Act are repealed and the following substituted therefor:

(1) Every collector, importer, registered consumer and purchaser shall pay to the Treasurer a tax at the rate of,

Tax on
clear fuel

- (a) 9.9 cents per litre on each litre of clear fuel received or used by him or her in Ontario to generate power in a motor vehicle other than railway equipment operated on rails in connection with a public transportation system; and
- (b) 3.1 cents per litre on each litre of clear fuel received or used by him or her in Ontario to propel railway equipment on rails where such equipment is operated in connection with and as part of a public transportation system.

3.—(1) Subsection 14 (1) of the said Act is repealed and the following substituted therefor:

(1) Where a person objects to an assessment or statement of disallowance under section 13, that person may, within 180 days from the service of the assessment or statement of disallowance, serve on the Minister a notice of objection in duplicate in the prescribed form setting out the reasons for the objection and all relevant facts.

Notice of
objection

(2) Subsection 14 (15) of the said Act is repealed and the following substituted therefor:

Extension

(15) The time within which a notice of objection or a notice of appeal is to be served may be extended by the Minister if application for extension is made,

(a) in respect of a notice of objection under subsection (1),

(i) before the expiration of the time allowed under that subsection for service of notice of the objection, or

(ii) within one year from the day of mailing or delivery by personal service of the notice of assessment or statement of disallowance that is the subject of the objection where the person wishing to make objection furnishes to the Minister an explanation satisfactory to the Minister that explains why the notice of objection could not be served in accordance with subsection (1); or

(b) in respect of a notice of appeal, before the expiration of the time allowed under subsection (5) for the service of the notice of appeal.

4. Section 17 of the said Act is amended by adding thereto the following subsection:

Security
for tax

(1a) Where the Minister considers it advisable to do so, the Minister may accept security for the payment of taxes in any manner the Minister considers appropriate.

5. Subsection 18 (3) of the said Act is repealed.

6. Clauses 30 (2) (b) and (c) of the said Act are repealed.

Commence-
ment

7.—(1) This Act, except section 3, comes into force on the day following the day it receives Royal Assent.

Idem

(2) Section 3 shall be deemed to have come into force on the 15th day of February, 1984.

Short title

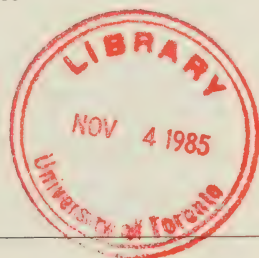
8. The short title of this Act is the *Fuel Tax Amendment Act, 1985*.

Bill 51

An Act to amend the Gasoline Tax Act

The Hon. R. Nixon
Minister of Revenue

1st Reading October 24th, 1985
2nd Reading
3rd Reading
Royal Assent



EXPLANATORY NOTES

The purpose of the Bill is,

- (a) to replace the existing *ad valorem* tax on gasoline and aviation fuel with a unitary tax at the rate of 8.8 cents per litre for gasoline and 1.88 cents per litre for aviation fuel;
- (b) to provide a method of objection and appeal where a taxpayer's claim for a refund of tax is denied;
- (c) to extend the time for the taxpayer to object to an assessment and to permit the Minister to extend that time where special circumstances prevent the taxpayer from meeting that limit; and
- (d) to withdraw the special search warrant provisions of the Act; the search warrant provisions of the *Provincial Offences Act* will be utilized in their stead.

SECTION 1. Clause 1 (ja) which defines the taxable price per litre as a basis for calculating the *ad valorem* tax is no longer required. Clause 1 (ja) now reads as follows:

- (ja) "*taxable price per litre*" of any grade or type of gasoline designated by the Minister means the price per litre from time to time prescribed by the Minister as the taxable price per litre of that grade or type of gasoline for such period of time as the Minister may prescribe, and in determining the taxable price per litre of any grade or type of gasoline, the Minister shall use the median price obtained by him from such periodic sampling as he considers appropriate of the retail prices (excluding the tax imposed by this Act) of gasoline in such part or parts of Ontario as he shall direct a sample to be taken, provided that no change in the taxable price per litre of gasoline from time to time in effect shall come into force until at least two days after the filing of a regulation prescribing a different taxable price per litre of any grade or type of gasoline.

SECTION 2. This section replaces the existing *ad valorem* tax on fuel with a unitary tax at the rate of 8.8 cents per litre of gasoline and 1.88 cents per litre for aviation fuel. Subsections 2 (1), (2) and (2a) now read as follows:

(1) Every purchaser of gasoline shall, for all gasoline purchased, or delivery of which is received, by him, pay to the Treasurer a tax at the rate of 20 per cent of the taxable price per litre applicable to the grade or type of gasoline so purchased or delivered, and until a taxable price per litre is prescribed by the Minister in accordance with this Act, every purchaser of gasoline shall pay to the Treasurer a tax at the rate of,

- (a) 5.4 cents per litre of regular leaded gasoline;
- (b) 5.8 cents per litre of regular unleaded gasoline; and
- (c) 6 cents per litre of premium leaded or unleaded gasoline,

purchased, or delivery of which is received, by him.

(2) Every purchaser of aviation fuel shall, for all aviation fuel purchased, or delivery of which is received, by him, pay to the Treasurer a tax at the rate of 5.13 per cent of the taxable price per litre of fuel from time to time prescribed for the purposes of the Motor Vehicle Fuel Tax Act, and until a taxable price per litre of fuel is prescribed by the Minister in accordance with the Motor Vehicle Fuel Tax Act, every purchaser of aviation fuel shall pay to the Treasurer a tax at the rate of 1.32 cents per litre of aviation fuel purchased, or delivery of which is received, by him.

(2a) The tax imposed by this Act shall not be increased or reduced by reason of the fact that the price or consideration paid or given by a purchaser for gasoline or aviation fuel is different from the taxable price per litre of that gasoline or aviation fuel.

SECTION 3.—Subsection 1. The amendment is complementary to the re-enactment of subsection 11 (2) of the Act set out in subsection (3) of this section.

Subsection 2. The new subsection (1a) of the Act provides for the service of a statement of disallowance on a person whose claim for refund is refused.

Subsection 3. Subsections 11 (2) and (3) of the Act are re-enacted to include references to the statement of disallowance now provided for.

Subsection 4. Subsections 11 (9) and (10) of the Act are similarly re-enacted to include references to the statement of disallowance.

SECTION 4. The amendments to subsections 13 (1) and (3) of the Act permit objection to be made by a taxpayer to a disallowance of a claim for refund in the same manner as objection may be made to the making of an assessment for tax. In addition, the time for making such objection is enlarged from ninety days to 180 days from the serving of the notice of assessment or, now, of the statement of disallowance.

Subsections 13 (1) and (3) of the Act as they will now read are set out below showing underlined the changes being made:

(1) Where a person objects to an assessment or a statement of disallowance made under section 11, he may, within 180 days from the day of mailing or delivery by personal service of the notice of assessment or statement of disallowance, serve on the Minister a notice of objection in duplicate in the prescribed form setting out the reasons for the objection and all relevant facts.

(3) Upon receipt of a notice of objection, the Minister shall with all due dispatch reconsider the assessment or statement of disallowance and vacate, confirm or vary the assessment or statement of disallowance or reassess, and he shall thereupon notify the person who has made the objection of his action by registered mail.

SECTION 5.—Subsection 1. The amendment will allow an appeal to be taken from the disallowance of a claim for refund in the same manner as an appeal may be taken from an assessment.

Subsection 14 (1) of the Act, as it will read after the amendment, is set out below showing underlined the words that are added:

(1) After the Minister has given the notification required by subsection 13 (3), a person who has served notice of objection under section 13 may appeal to the Supreme Court to have the assessment or statement of disallowance vacated or varied or reassessed, but no appeal under this section shall be instituted after the expiration of ninety days from the day notice has been mailed to such person under subsection 13 (3).

Subsection 2. The re-enactment of subsection 14 (5) of the Act will limit the time provided for the Minister to reply to a notice of appeal to 180 days and provide a mechanism for having the assessment vacated or the refund allowed if the limitation is not met.

Subsection 14 (5) now reads as follows:

(5) After the service on him of a notice of appeal under this section, the Minister shall with all due dispatch serve on the person appealing and file in the Supreme Court where the notice of appeal was filed a reply to the notice of appeal admitting or denying the facts

alleged and containing a statement of such further allegations of fact and of such statutory provisions and reasons as he intends to rely on.

Subsection 3. The re-enactment of subsection 14 (7) of the Act specifically directs the Minister to take such action as is required to carry out the order made by the court on an appeal. Subsection 14 (7) as it now reads is set out below:

(7) The court may dispose of the appeal by,

(a) dismissing it;

(b) allowing it; or

(c) allowing it, and

(i) vacating the assessment,

(ii) varying the assessment,

(iii) restoring the original assessment, or

(iv) referring the assessment back to the Minister for reconsideration and reassessment.

Subsection 4. The re-enactment of subsection 14 (11) of the Act authorizes the Minister to extend the time allowed for service of a notice of objection on application made after the initial time limit has expired, where the Minister is satisfied as to the reason that time limit was not met.

Subsection 14 (11) now reads as follows:

(11) The time within which a notice of objection under subsection 13 (1) or a notice of appeal under subsection (1) of this section is to be served may be extended by the Minister if application for extension is made before expiration of the time for service of the notice of objection or notice of appeal, as the case may be.

SECTION 6. The repeal removes the special search warrant powers under the Act; the search warrant provisions of the *Provincial Offences Act* will be utilized in their stead. Subsection 16 (4) now reads as follows:

*(4) The Minister may, for any purpose related to the administration or enforcement of this Act, with the approval of a judge of the Supreme Court, which approval the judge is hereby empowered to give upon *ex parte* application, authorize in writing any officer of the Ministry of Revenue, together with such members of the Ontario Provincial Police Force or other peace officers as he calls upon to assist him and such other persons as are named therein, to enter and search, if necessary by force, any building, receptacle or place for documents, books, records, papers or things that may afford evidence as to the contravention of any provision of this Act or the regulations and to seize and to take away any such documents, books, records, papers or things and retain them until they are produced in any court proceedings.*

SECTION 7. The Minister is specifically authorized to accept security for the payment of tax.

SECTION 8. The amendment extends from two years to three years the time limit for applying for a refund of tax.

SECTION 9. The subsection added permits the Minister to release information to the Ministry of Treasury and Economics for the sole purpose of evaluating and formulating tax policy.

SECTION 10.—Subsection 1. Clauses 32 (2) (d), (e) and (f) of the Act which authorize the Minister to make regulations prescribing the taxable price per litre of gasoline and the tax per litre of gasoline are no longer required. Clauses 32 (2) (d), (e) and (f) now read as follows:

- (d) *prescribing the taxable price per litre of gasoline to be in effect from time to time, the period of time for which such price shall be in effect, and designating grades or types of gasoline and the taxable price per litre applicable to any such grade or type;*
- (e) *fixing to the nearest tenth of a cent the tax per litre of gasoline to be paid under this Act as a result of the prescribing from time to time of a taxable price per litre of gasoline in accordance with clause (d);*
- (f) *fixing to the nearest hundredth of a cent the tax per litre of aviation fuel to be paid under this Act as a result of the prescribing from time to time of a taxable price per litre of fuel in accordance with clause 29 (3) (b) of the Motor Vehicle Fuel Tax Act.*

Subsection 2. Subsection 32 (3) as it now reads is set out below showing underlined the words being deleted by the amendment:

(3) *A regulation, other than a regulation prescribing the taxable price per litre of any grade or type of gasoline, is, if it so provides, effective with reference to a period before it was filed.*

Bill 51

1985

An Act to amend the Gasoline Tax Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Clause 1 (ja) of the *Gasoline Tax Act*, being chapter 186 of the Revised Statutes of Ontario, 1980, as enacted by the Statutes of Ontario, 1981, chapter 11, section 1, is repealed.

2. Subsections 2 (1), (2) and (2a) of the said Act, as re-enacted by the Statutes of Ontario, 1981, chapter 11, section 2, are repealed and the following substituted therefor:

(1) Every purchaser of gasoline shall pay to the Treasurer a tax at the rate of 8.8 cents per litre on all gasoline purchased by, or delivered to, the purchaser.

Tax payable
by purchaser
of gasoline

(2) Every purchaser of aviation fuel shall pay to the Treasurer a tax at the rate of 1.88 cents per litre on all aviation fuel purchased by, or delivered to, the purchaser.

Tax on
aviation fuel

3.—(1) Subsection 11 (1) of the said Act is amended by adding at the end thereof “and serve notice of the assessment on the person”.

(2) Section 11 of the said Act is amended by adding thereto the following subsection:

(1a) Where a person has, in accordance with this Act and the regulations, applied for or taken a refund and the claim is in whole or in part refused, the Minister shall cause to be served on the person a statement of disallowance in the prescribed form and the statement shall specify the amount of the refund disallowed and the reasons therefor.

Disallowance
of refund

(3) Subsections 11 (2) and (3) of the said Act are repealed and the following substituted therefor:

(2) A notice of assessment under subsection (1) or a statement of disallowance under subsection (1a) may be served by

Remittance
of
tax assessed
or refund
disallowed

sending the notice or statement by prepaid mail to the person against whom the assessment is made or whose claim is refused, as the case may be, at the person's last known address or by serving such notice or statement personally and the person who was assessed or whose refund was refused shall, within thirty days of the mailing or personal service of the notice of assessment or statement of disallowance, transmit the amount of the assessment or of the refund refused to the Treasurer.

Remittance
forthwith

(3) Where the Minister has assessed tax under subsection (1) or has disallowed a refund under subsection (1a), the notice of assessment or statement of disallowance referred to in subsection (2) may provide that the amount owing is payable forthwith.

(4) Subsections 11 (9) and (10) of the said Act are repealed and the following substituted therefor:

Assessment
valid and
binding

(9) An assessment or statement of disallowance, subject to being varied or vacated on an objection or appeal and subject to a reassessment or the service of a fresh statement of disallowance, shall be deemed to be valid and binding notwithstanding any error, defect or omission therein or in any proceeding under this Act relating thereto.

Idem

(10) The amount of any assessment or disallowance of a refund is payable within the time required by the notice of assessment or statement of disallowance whether or not an objection or appeal from the assessment or statement of disallowance is outstanding.

4.—(1) Subsection 13 (1) of the said Act is amended,

- (a) by inserting after “assessment” in the first line “or a statement of disallowance”; and
- (b) by inserting after “assessment” in the fourth line “or statement of disallowance”.

(2) The said subsection 13 (1) is further amended by striking out “ninety” in the second line and inserting in lieu thereof “180”.

(3) Subsection 13 (3) of the said Act is amended by inserting after “assessment” in the second line and in the third line “or statement of disallowance”.

5.—(1) Subsection 14 (1) of the said Act is amended by inserting after “assessment” in the fourth line “or statement of disallowance”.

(2) Subsection 14 (5) of the said Act is repealed and the following substituted therefor:

(5) The Minister shall with all due dispatch serve on the appellant and file with the Supreme Court a reply to the notice of appeal admitting or denying the facts alleged and containing a statement of such allegations of fact and of such statutory provisions and reasons as the Minister intends to rely on, and where the Minister fails to serve the reply within 180 days from the date of service upon the Minister of the notice under subsection (2), the appellant may, upon twenty-one days notice to the Minister, apply to a judge of the Supreme Court for an order requiring the reply to be served within such time as the judge shall order, and the judge may, if the judge considers it proper in the circumstances, also order that, upon the failure of the Minister to serve the reply in the time specified by the order, the assessment or notice of disallowance with respect to which the appeal is made shall be vacated and any tax pursuant to such assessment shall be repaid to the appellant or the refund disallowed be paid to the appellant, but nothing in this section revives an appeal that is void or affects a statement of disallowance or assessment that has become valid and binding.

Reply to
notice of
appeal

(3) Subsection 14 (7) of the said Act is repealed and the following substituted therefor:

(7) The court may dispose of the appeal by such order as it considers just and the Minister shall, subject to the final decision of any court to which the order is appealed, vacate or vary, where necessary, the assessment or statement of disallowance so as to carry out the final order of the court.

Disposition
of appeal

(4) Subsection 14 (11) of the said Act is repealed and the following substituted therefor:

(11) The time within which a notice of objection or a notice of appeal is to be served may be extended by the Minister if application for extension is made,

Extension
of time

(a) in respect of a notice of objection under subsection 13 (1),

(i) before the expiration of the time allowed under that subsection for service of notice of the objection, or

(ii) within one year from the day of mailing or delivery by personal service of the notice of assessment or statement of disallowance that is the subject of the objection where the person wishing to make objection furnishes to the Minister an explanation satisfactory to the Minister that explains why the notice of objection could not be served in accordance with subsection 13 (1); or

(b) in respect of a notice of appeal, before the expiration of the time allowed under subsection (1) of this section for service of the notice of appeal.

6. Subsection 16 (4) of the said Act is repealed.

7. Section 18 of the said Act is amended by adding thereto the following subsection:

Security
for tax

(1a) Where the Minister considers it advisable to do so, the Minister may accept security for the payment of taxes in any form the Minister considers appropriate.

8. Subsection 27 (4) of the said Act is amended by striking out “two” in the third line and in the fifth line and inserting in lieu thereof in each instance “three”.

9. Section 30 of the said Act is amended by adding thereto the following subsection:

Communica-
tion
with Ministry
of Treasury
and
Economics

(7) Notwithstanding anything in this section, the Minister may communicate or allow to be communicated to an official of the Ministry of Treasury and Economics, solely for the purpose of evaluating and formulating tax policy, information obtained under this Act.

10.—(1) Clauses 32 (2) (d), (e) and (f) of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 11, section 3, are repealed.

(2) Subsection 32 (3) of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 11, section 3, is amended by striking out “other than a regulation prescribing the taxable price per litre of any grade or type of gasoline” in the first and second lines.

Commence-
ment

11.—(1) This Act, except subsections 4 (2) and 5 (4), comes into force on the day following the day it receives Royal Assent.

(2) Subsections 4 (2) and 5 (4) shall be deemed to have come ^{Idem} into force on the 15th day of February, 1984.

12. The short title of this Act is the *Gasoline Tax Amend-* ^{Short title}
ment Act, 1985.

Bill 51

An Act to amend the Gasoline Tax Act

The Hon. R. Nixon
Minister of Revenue



1st Reading October 24th, 1985
2nd Reading December 10th, 1985
3rd Reading
Royal Assent

(Reprinted as amended by the Committee of the Whole House)

EXPLANATORY NOTES

The purpose of the Bill is,

- (a) to replace the existing *ad valorem* tax on gasoline and aviation fuel with a unitary tax at the rate of 8.3 cents per litre for gasoline and 1.88 cents per litre for aviation fuel;
- (b) to provide a method of objection and appeal where a taxpayer's claim for a refund of tax is denied;
- (c) to extend the time for the taxpayer to object to an assessment and to permit the Minister to extend that time where special circumstances prevent the taxpayer from meeting that limit; and
- (d) to withdraw the special search warrant provisions of the Act; the search warrant provisions of the *Provincial Offences Act* will be utilized in their stead.

SECTION 1. Clause 1 (ja) which defines the taxable price per litre as a basis for calculating the *ad valorem* tax is no longer required. Clause 1 (ja) now reads as follows:

(ja) "taxable price per litre" of any grade or type of gasoline designated by the Minister means the price per litre from time to time prescribed by the Minister as the taxable price per litre of that grade or type of gasoline for such period of time as the Minister may prescribe, and in determining the taxable price per litre of any grade or type of gasoline, the Minister shall use the median price obtained by him from such periodic sampling as he considers appropriate of the retail prices (excluding the tax imposed by this Act) of gasoline in such part or parts of Ontario as he shall direct a sample to be taken, provided that no change in the taxable price per litre of gasoline from time to time in effect shall come into force until at least two days after the filing of a regulation prescribing a different taxable price per litre of any grade or type of gasoline.

SECTION 2. This section replaces the existing *ad valorem* tax on fuel with a unitary tax at the rate of 8.3 cents per litre of gasoline and 1.88 cents per litre for aviation fuel. Subsections 2 (1), (2) and (2a) now read as follows:

(1) Every purchaser of gasoline shall, for all gasoline purchased, or delivery of which is received, by him, pay to the Treasurer a tax at the rate of 20 per cent of the taxable price per litre applicable to the grade or type of gasoline so purchased or delivered, and until a taxable price per litre is prescribed by the Minister in accordance with this Act, every purchaser of gasoline shall pay to the Treasurer a tax at the rate of,

- (a) 5.4 cents per litre of regular leaded gasoline;
- (b) 5.8 cents per litre of regular unleaded gasoline; and
- (c) 6 cents per litre of premium leaded or unleaded gasoline,

purchased, or delivery of which is received, by him.

(2) Every purchaser of aviation fuel shall, for all aviation fuel purchased, or delivery of which is received, by him, pay to the Treasurer a tax at the rate of 5.13 per cent of the taxable price per litre of fuel from time to time prescribed for the purposes of the Motor Vehicle Fuel Tax Act, and until a taxable price per litre of fuel is prescribed by the Minister in accordance with the Motor Vehicle Fuel Tax Act, every purchaser of aviation fuel shall pay to the Treasurer a tax at the rate of 1.32 cents per litre of aviation fuel purchased, or delivery of which is received, by him.

(2a) The tax imposed by this Act shall not be increased or reduced by reason of the fact that the price or consideration paid or given by a purchaser for gasoline or aviation fuel is different from the taxable price per litre of that gasoline or aviation fuel.

SECTION 3.—Subsection 1. The amendment is complementary to the re-enactment of subsection 11 (2) of the Act set out in subsection (3) of this section.

Subsection 2. The new subsection (1a) of the Act provides for the service of a statement of disallowance on a person whose claim for refund is refused.

Subsection 3. Subsections 11 (2) and (3) of the Act are re-enacted to include references to the statement of disallowance now provided for.

Subsection 4. Subsections 11 (9) and (10) of the Act are similarly re-enacted to include references to the statement of disallowance.

SECTION 4. The amendments to subsections 13 (1) and (3) of the Act permit objection to be made by a taxpayer to a disallowance of a claim for refund in the same manner as objection may be made to the making of an assessment for tax. In addition, the time for making such objection is enlarged from ninety days to 180 days from the serving of the notice of assessment or, now, of the statement of disallowance.

Subsections 13 (1) and (3) of the Act as they will now read are set out below showing underlined the changes being made:

(1) Where a person objects to an assessment or a statement of disallowance made under section 11, he may, within 180 days from the day of mailing or delivery by personal service of the notice of assessment or statement of disallowance, serve on the Minister a notice of objection in duplicate in the prescribed form setting out the reasons for the objection and all relevant facts.

(3) Upon receipt of a notice of objection, the Minister shall with all due dispatch reconsider the assessment or statement of disallowance and vacate, confirm or vary the assessment or statement of disallowance or reassess, and he shall thereupon notify the person who has made the objection of his action by registered mail.

SECTION 5.—Subsection 1. The amendment will allow an appeal to be taken from the disallowance of a claim for refund in the same manner as an appeal may be taken from an assessment.

Subsection 14 (1) of the Act, as it will read after the amendment, is set out below showing underlined the words that are added:

(1) After the Minister has given the notification required by subsection 13 (3), a person who has served notice of objection under section 13 may appeal to the Supreme Court to have the assessment or statement of disallowance vacated or varied or reassessed, but no appeal under this section shall be instituted after the expiration of ninety days from the day notice has been mailed to such person under subsection 13 (3).

Subsection 2. The re-enactment of subsection 14 (5) of the Act will limit the time provided for the Minister to reply to a notice of appeal to 180 days and provide a mechanism for having the assessment vacated or the refund allowed if the limitation is not met.

Subsection 14 (5) now reads as follows:

(5) After the service on him of a notice of appeal under this section, the Minister shall with all due dispatch serve on the person appealing and file in the Supreme Court where the notice of appeal was filed a reply to the notice of appeal admitting or denying the facts

alleged and containing a statement of such further allegations of fact and of such statutory provisions and reasons as he intends to rely on.

Subsection 3. The re-enactment of subsection 14 (7) of the Act specifically directs the Minister to take such action as is required to carry out the order made by the court on an appeal. Subsection 14 (7) as it now reads is set out below:

(7) The court may dispose of the appeal by,

(a) dismissing it;

(b) allowing it; or

(c) allowing it, and

(i) vacating the assessment,

(ii) varying the assessment,

(iii) restoring the original assessment, or

(iv) referring the assessment back to the Minister for reconsideration and reassessment.

Subsection 4. The re-enactment of subsection 14 (11) of the Act authorizes the Minister to extend the time allowed for service of a notice of objection on application made after the initial time limit has expired, where the Minister is satisfied as to the reason that time limit was not met.

Subsection 14 (11) now reads as follows:

(11) The time within which a notice of objection under subsection 13 (1) or a notice of appeal under subsection (1) of this section is to be served may be extended by the Minister if application for extension is made before expiration of the time for service of the notice of objection or notice of appeal, as the case may be.

SECTION 6. The repeal removes the special search warrant powers under the Act; the search warrant provisions of the *Provincial Offences Act* will be utilized in their stead. Subsection 16 (4) now reads as follows:

*(4) The Minister may, for any purpose related to the administration or enforcement of this Act, with the approval of a judge of the Supreme Court, which approval the judge is hereby empowered to give upon *ex parte* application, authorize in writing any officer of the Ministry of Revenue, together with such members of the Ontario Provincial Police Force or other peace officers as he calls upon to assist him and such other persons as are named therein, to enter and search, if necessary by force, any building, receptacle or place for documents, books, records, papers or things that may afford evidence as to the contravention of any provision of this Act or the regulations and to seize and to take away any such documents, books, records, papers or things and retain them until they are produced in any court proceedings.*

SECTION 7. The Minister is specifically authorized to accept security for the payment of tax.

SECTION 8. The amendment extends from two years to three years the time limit for applying for a refund of tax.

SECTION 9. The subsection added permits the Minister to release information to the Ministry of Treasury and Economics for the sole purpose of evaluating and formulating tax policy.

SECTION 10.—Subsection 1. Clauses 32 (2) (d), (e) and (f) of the Act which authorize the Minister to make regulations prescribing the taxable price per litre of gasoline and the tax per litre of gasoline are no longer required. Clauses 32 (2) (d), (e) and (f) now read as follows:

- (d) *prescribing the taxable price per litre of gasoline to be in effect from time to time, the period of time for which such price shall be in effect, and designating grades or types of gasoline and the taxable price per litre applicable to any such grade or type;*
- (e) *fixing to the nearest tenth of a cent the tax per litre of gasoline to be paid under this Act as a result of the prescribing from time to time of a taxable price per litre of gasoline in accordance with clause (d);*
- (f) *fixing to the nearest hundredth of a cent the tax per litre of aviation fuel to be paid under this Act as a result of the prescribing from time to time of a taxable price per litre of fuel in accordance with clause 29 (3) (b) of the Motor Vehicle Fuel Tax Act.*

Subsection 2. Subsection 32 (3) as it now reads is set out below showing underlined the words being deleted by the amendment:

(3) *A regulation, other than a regulation prescribing the taxable price per litre of any grade or type of gasoline, is, if it so provides, effective with reference to a period before it was filed.*

Bill 51

1985

An Act to amend the Gasoline Tax Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Clause 1 (ja) of the *Gasoline Tax Act*, being chapter 186 of the Revised Statutes of Ontario, 1980, as enacted by the Statutes of Ontario, 1981, chapter 11, section 1, is repealed.

2. Subsections 2 (1), (2) and (2a) of the said Act, as re-enacted by the Statutes of Ontario, 1981, chapter 11, section 2, are repealed and the following substituted therefor:

(1) Every purchaser of gasoline shall pay to the Treasurer a tax at the rate of 8.3 cents per litre on all gasoline purchased by, or delivered to, the purchaser. Tax payable by purchaser of gasoline

(2) Every purchaser of aviation fuel shall pay to the Treasurer a tax at the rate of 1.88 cents per litre on all aviation fuel purchased by, or delivered to, the purchaser. Tax on aviation fuel

3.—(1) Subsection 11 (1) of the said Act is amended by adding at the end thereof “and serve notice of the assessment on the person”.

(2) Section 11 of the said Act is amended by adding thereto the following subsection:

(1a) Where a person has, in accordance with this Act and the regulations, applied for or taken a refund and the claim is in whole or in part refused, the Minister shall cause to be served on the person a statement of disallowance in the prescribed form and the statement shall specify the amount of the refund disallowed and the reasons therefor. Disallowance of refund

(3) Subsections 11 (2) and (3) of the said Act are repealed and the following substituted therefor:

(2) A notice of assessment under subsection (1) or a statement of disallowance under subsection (1a) may be served by Remittance of tax assessed or refund disallowed

sending the notice or statement by prepaid mail to the person against whom the assessment is made or whose claim is refused, as the case may be, at the person's last known address or by serving such notice or statement personally and the person who was assessed or whose refund was refused shall, within thirty days of the mailing or personal service of the notice of assessment or statement of disallowance, transmit the amount of the assessment or of the refund refused to the Treasurer.

Remittance
forthwith

(3) Where the Minister has assessed tax under subsection (1) or has disallowed a refund under subsection (1a), the notice of assessment or statement of disallowance referred to in subsection (2) may provide that the amount owing is payable forthwith.

(4) Subsections 11 (9) and (10) of the said Act are repealed and the following substituted therefor:

Assessment
valid and
binding

(9) An assessment or statement of disallowance, subject to being varied or vacated on an objection or appeal and subject to a reassessment or the service of a fresh statement of disallowance, shall be deemed to be valid and binding notwithstanding any error, defect or omission therein or in any proceeding under this Act relating thereto.

Idem

(10) The amount of any assessment or disallowance of a refund is payable within the time required by the notice of assessment or statement of disallowance whether or not an objection or appeal from the assessment or statement of disallowance is outstanding.

4.—(1) Subsection 13 (1) of the said Act is amended,

- (a) by inserting after “assessment” in the first line “or a statement of disallowance”; and
- (b) by inserting after “assessment” in the fourth line “or statement of disallowance”.

(2) The said subsection 13 (1) is further amended by striking out “ninety” in the second line and inserting in lieu thereof “180”.

(3) Subsection 13 (3) of the said Act is amended by inserting after “assessment” in the second line and in the third line “or statement of disallowance”.

5.—(1) Subsection 14 (1) of the said Act is amended by inserting after “assessment” in the fourth line “or statement of disallowance”.

(2) Subsection 14 (5) of the said Act is repealed and the following substituted therefor:

(5) The Minister shall with all due dispatch serve on the appellant and file with the Supreme Court a reply to the notice of appeal admitting or denying the facts alleged and containing a statement of such allegations of fact and of such statutory provisions and reasons as the Minister intends to rely on, and where the Minister fails to serve the reply within 180 days from the date of service upon the Minister of the notice under subsection (2), the appellant may, upon twenty-one days notice to the Minister, apply to a judge of the Supreme Court for an order requiring the reply to be served within such time as the judge shall order, and the judge may, if the judge considers it proper in the circumstances, also order that, upon the failure of the Minister to serve the reply in the time specified by the order, the assessment or notice of disallowance with respect to which the appeal is made shall be vacated and any tax pursuant to such assessment shall be repaid to the appellant or the refund disallowed be paid to the appellant, but nothing in this section revives an appeal that is void or affects a statement of disallowance or assessment that has become valid and binding.

Reply to
notice of
appeal

(3) Subsection 14 (7) of the said Act is repealed and the following substituted therefor:

(7) The court may dispose of the appeal by such order as it considers just and the Minister shall, subject to the final decision of any court to which the order is appealed, vacate or vary, where necessary, the assessment or statement of disallowance so as to carry out the final order of the court.

Disposition
of appeal

(4) Subsection 14 (11) of the said Act is repealed and the following substituted therefor:

(11) The time within which a notice of objection or a notice of appeal is to be served may be extended by the Minister if application for extension is made,

Extension
of time

(a) in respect of a notice of objection under subsection 13 (1),

(i) before the expiration of the time allowed under that subsection for service of notice of the objection, or

(ii) within one year from the day of mailing or delivery by personal service of the notice of assessment or statement of disallowance that is the subject of the objection where the person wishing to make objection furnishes to the Minister an explanation satisfactory to the Minister that explains why the notice of objection could not be served in accordance with subsection 13 (1); or

(b) in respect of a notice of appeal, before the expiration of the time allowed under subsection (1) of this section for service of the notice of appeal.

6. Subsection 16 (4) of the said Act is repealed.

7. Section 18 of the said Act is amended by adding thereto the following subsection:

Security
for tax

(1a) Where the Minister considers it advisable to do so, the Minister may accept security for the payment of taxes in any form the Minister considers appropriate.

8. Subsection 27 (4) of the said Act is amended by striking out “two” in the third line and in the fifth line and inserting in lieu thereof in each instance “three”.

9. Section 30 of the said Act is amended by adding thereto the following subsection:

Communica-
tion
with Ministry
of Treasury
and
Economics

(7) Notwithstanding anything in this section, the Minister may communicate or allow to be communicated to an official of the Ministry of Treasury and Economics, solely for the purpose of evaluating and formulating tax policy, information obtained under this Act.

10.—(1) Clauses 32 (2) (d), (e) and (f) of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 11, section 3, are repealed.

(2) Subsection 32 (3) of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 11, section 3, is amended by striking out “other than a regulation prescribing the taxable price per litre of any grade or type of gasoline” in the first and second lines.

Commence-
ment

11.—(1) This Act, except subsections 4 (2) and 5 (4), comes into force on the day following the day it receives Royal Assent.

(2) Subsections 4 (2) and 5 (4) shall be deemed to have come ^{Idem} into force on the 15th day of February, 1984.

12. The short title of this Act is the *Gasoline Tax Amendment Act, 1985*. ^{Short title}

Bill 51

*(Chapter 24
Statutes of Ontario, 1985)*

An Act to amend the Gasoline Tax Act

The Hon. R. Nixon
Minister of Revenue



<i>1st Reading</i>	October 24th, 1985
<i>2nd Reading</i>	December 10th, 1985
<i>3rd Reading</i>	December 20th, 1985
<i>Royal Assent</i>	December 31st, 1985

Bill 51

1985

An Act to amend the Gasoline Tax Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Clause 1 (ja) of the *Gasoline Tax Act*, being chapter 186 of the Revised Statutes of Ontario, 1980, as enacted by the Statutes of Ontario, 1981, chapter 11, section 1, is repealed.

2. Subsections 2 (1), (2) and (2a) of the said Act, as re-enacted by the Statutes of Ontario, 1981, chapter 11, section 2, are repealed and the following substituted therefor:

(1) Every purchaser of gasoline shall pay to the Treasurer a tax at the rate of 8.3 cents per litre on all gasoline purchased by, or delivered to, the purchaser. Tax payable by purchaser of gasoline

(2) Every purchaser of aviation fuel shall pay to the Treasurer a tax at the rate of 1.88 cents per litre on all aviation fuel purchased by, or delivered to, the purchaser. Tax on aviation fuel

3.—(1) Subsection 11 (1) of the said Act is amended by adding at the end thereof “and serve notice of the assessment on the person”.

(2) Section 11 of the said Act is amended by adding thereto the following subsection:

(1a) Where a person has, in accordance with this Act and the regulations, applied for or taken a refund and the claim is in whole or in part refused, the Minister shall cause to be served on the person a statement of disallowance in the prescribed form and the statement shall specify the amount of the refund disallowed and the reasons therefor. Disallowance of refund

(3) Subsections 11 (2) and (3) of the said Act are repealed and the following substituted therefor:

(2) A notice of assessment under subsection (1) or a statement of disallowance under subsection (1a) may be served by Remittance of tax assessed or refund disallowed

sending the notice or statement by prepaid mail to the person against whom the assessment is made or whose claim is refused, as the case may be, at the person's last known address or by serving such notice or statement personally and the person who was assessed or whose refund was refused shall, within thirty days of the mailing or personal service of the notice of assessment or statement of disallowance, transmit the amount of the assessment or of the refund refused to the Treasurer.

Remittance
forthwith

(3) Where the Minister has assessed tax under subsection (1) or has disallowed a refund under subsection (1a), the notice of assessment or statement of disallowance referred to in subsection (2) may provide that the amount owing is payable forthwith.

(4) Subsections 11 (9) and (10) of the said Act are repealed and the following substituted therefor:

Assessment
valid and
binding

(9) An assessment or statement of disallowance, subject to being varied or vacated on an objection or appeal and subject to a reassessment or the service of a fresh statement of disallowance, shall be deemed to be valid and binding notwithstanding any error, defect or omission therein or in any proceeding under this Act relating thereto.

Idem

(10) The amount of any assessment or disallowance of a refund is payable within the time required by the notice of assessment or statement of disallowance whether or not an objection or appeal from the assessment or statement of disallowance is outstanding.

4.—(1) Subsection 13 (1) of the said Act is amended,

(a) by inserting after “assessment” in the first line “or a statement of disallowance”; and

(b) by inserting after “assessment” in the fourth line “or statement of disallowance”.

(2) The said subsection 13 (1) is further amended by striking out “ninety” in the second line and inserting in lieu thereof “180”.

(3) Subsection 13 (3) of the said Act is amended by inserting after “assessment” in the second line and in the third line “or statement of disallowance”.

5.—(1) Subsection 14 (1) of the said Act is amended by inserting after “assessment” in the fourth line “or statement of disallowance”.

(2) Subsection 14 (5) of the said Act is repealed and the following substituted therefor:

(5) The Minister shall with all due dispatch serve on the appellant and file with the Supreme Court a reply to the notice of appeal admitting or denying the facts alleged and containing a statement of such allegations of fact and of such statutory provisions and reasons as the Minister intends to rely on, and where the Minister fails to serve the reply within 180 days from the date of service upon the Minister of the notice under subsection (2), the appellant may, upon twenty-one days notice to the Minister, apply to a judge of the Supreme Court for an order requiring the reply to be served within such time as the judge shall order, and the judge may, if the judge considers it proper in the circumstances, also order that, upon the failure of the Minister to serve the reply in the time specified by the order, the assessment or notice of disallowance with respect to which the appeal is made shall be vacated and any tax pursuant to such assessment shall be repaid to the appellant or the refund disallowed be paid to the appellant, but nothing in this section revives an appeal that is void or affects a statement of disallowance or assessment that has become valid and binding.

Reply to
notice of
appeal

(3) Subsection 14 (7) of the said Act is repealed and the following substituted therefor:

(7) The court may dispose of the appeal by such order as it considers just and the Minister shall, subject to the final decision of any court to which the order is appealed, vacate or vary, where necessary, the assessment or statement of disallowance so as to carry out the final order of the court.

Disposition
of appeal

(4) Subsection 14 (11) of the said Act is repealed and the following substituted therefor:

(11) The time within which a notice of objection or a notice of appeal is to be served may be extended by the Minister if application for extension is made,

Extension
of time

(a) in respect of a notice of objection under subsection 13 (1),

(i) before the expiration of the time allowed under that subsection for service of notice of the objection, or

(ii) within one year from the day of mailing or delivery by personal service of the notice of assessment or statement of disallowance that is the subject of the objection where the person wishing to make objection furnishes to the Minister an explanation satisfactory to the Minister that explains why the notice of objection could not be served in accordance with subsection 13 (1); or

(b) in respect of a notice of appeal, before the expiration of the time allowed under subsection (1) of this section for service of the notice of appeal.

6. Subsection 16 (4) of the said Act is repealed.

7. Section 18 of the said Act is amended by adding thereto the following subsection:

Security
for tax

(1a) Where the Minister considers it advisable to do so, the Minister may accept security for the payment of taxes in any form the Minister considers appropriate.

8. Subsection 27 (4) of the said Act is amended by striking out “two” in the third line and in the fifth line and inserting in lieu thereof in each instance “three”.

9. Section 30 of the said Act is amended by adding thereto the following subsection:

Communica-
tion
with Ministry
of Treasury
and
Economics

(7) Notwithstanding anything in this section, the Minister may communicate or allow to be communicated to an official of the Ministry of Treasury and Economics, solely for the purpose of evaluating and formulating tax policy, information obtained under this Act.

10.—(1) Clauses 32 (2) (d), (e) and (f) of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 11, section 3, are repealed.

(2) Subsection 32 (3) of the said Act, as enacted by the Statutes of Ontario, 1981, chapter 11, section 3, is amended by striking out “other than a regulation prescribing the taxable price per litre of any grade or type of gasoline” in the first and second lines.

Commence-
ment

11.—(1) This Act, except subsections 4 (2) and 5 (4), comes into force on the day following the day it receives Royal Assent.

(2) Subsections 4 (2) and 5 (4) shall be deemed to have come ^{Idem} into force on the 15th day of February, 1984.

12. The short title of this Act is the *Gasoline Tax Amend-* ^{Short title}
ment Act, 1985.

Bill 52

An Act to amend the
Health Protection and Promotion Act, 1983

Mr. Pierce



1st Reading November 5th, 1985
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTE

This Bill amends the *Health Protection and Promotion Act, 1983* to require physicians, nurses and pharmacists to report to their local medical officer of health any cases they encounter of severe reaction to the DPT vaccine given to infants and small children to protect them against diphtheria, pertussis and tetanus.



Bill 52

1985

**An Act to amend the
Health Protection and Promotion Act, 1983**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The *Health Protection and Promotion Act, 1983*, being chapter 10, is amended by adding thereto the following section:

37a.—(1) In this section, a “severe reaction” includes, but is not limited to, persistent crying or screaming, shock or collapse, convulsions, high fever and temporary or permanent brain damage.

Interpretation

(2) A physician or a person registered under Part IV or VI of the *Health Disciplines Act* to practise nursing or pharmacy who, while providing professional services to a child who has been immunized against diphtheria, pertussis and tetanus, forms the opinion that the child is suffering or has suffered from a severe reaction to the immunization shall, as soon as possible after forming the opinion, report thereon to the medical officer of health of the health unit in which the professional services are provided.

Duty to
report
reactions to
immunization
R.S.O. 1980,
c. 196

2. Subsection 38 (1) of the said Act is amended by striking out “or a virulent disease” in the fifth line and inserting in lieu thereof “a virulent disease or a severe reaction to an immunization against diphtheria, pertussis and tetanus”.

3. Subsection 99 (2) of the said Act is amended by striking out “or” in the second line and by inserting after “disease” in the third line “or a severe reaction to an immunization against diphtheria, pertussis and tetanus”.

4. This Act comes into force on the day it receives Royal Assent.

Commence-
ment

5. The short title of this Act is the *Health Protection and Promotion Amendment Act, 1985*.

Short title

Bill 53

An Act to amend the Labour Relations Act

Mr. MacKenzie



1st Reading November 5th, 1985
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTE

The purpose of the Bill is to clarify that the *Labour Relations Act* applies to employees who are engaged in agricultural employment in an industrial or factory setting. Clause 2 (b) of the Act currently states that the Act does not apply "to a person employed in agriculture". This provision has been interpreted broadly by the Ontario Labour Relations Board to exclude from the Act persons whose employment relates to agriculture but who are employed in organizations that resemble industrial plants..



Bill 53**1985****An Act to amend the Labour Relations Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Clause 2 (b) of the *Labour Relations Act*, being chapter 228 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

(b) to a person employed in agriculture on a farm by a person who is a farmer;

(ba) to a person employed in hunting or trapping.

2. This Act comes into force on the day it receives Royal Assent. Commence-
ment

3. The short title of this Act is the *Labour Relations Amendment Act, 1985*. Short title

Bill 54

An Act to Authorize and Regulate the Payment by the Minister to Specified Persons on Behalf of Specified Classes of Persons for the Dispensing of Specified Drugs

The Hon. M. Elston
Minister of Health



1st Reading November 7th, 1985
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTES

This Act provides a legislative framework for the Ontario Drug Benefit Plan, under which the Minister pays operators of pharmacies, physicians and suppliers of substances for supplying prescription drugs and substances free of charge for certain classes of persons, including senior citizens and welfare recipients. The Plan is now governed by agreements with the Minister.

The Act gives broad discretion to the Lieutenant Governor in Council to make regulations concerning,

- (a) what prescription drugs and substances are to be listed under the Act;
- (b) who is to be eligible for the benefits under the Act;
- (c) how much the Minister will pay for the supplying of drugs and substances under the Act; and
- (d) what charges, if any, may be made directly to eligible persons.

The discretion under clause (c) above, allows for setting different amounts for different drug products, suppliers or eligible persons.

The Act provides that subject to the regulations, operators of pharmacies and physicians may charge the Minister, but no one else, when they supply listed drugs for eligible persons. There is provision for the Minister to agree in writing with an operator to pay an amount different from that in the regulations. The Minister is given discretion, if a physician says it is necessary, to allow a non-listed drug supplied for a particular eligible person to be treated as if it were a listed drug.

The Minister is authorized to enter into agreements to pay for the supplying of substances other than drugs (e.g. oxygen) on behalf of eligible persons. An amending provision of the Act, which would not take effect until a later date, to be proclaimed, repeals that authorization and treats acceptable persons supplying listed substances in the same way as operators dispensing listed drugs. The Lieutenant Governor in Council has discretion to set criteria of acceptability.

The Lieutenant Governor in Council is authorized to require reports respecting the cost of purchasing drugs from operators of pharmacies. The Minister is authorized to inspect the records of operators to insure the accuracy of information required to be provided.

Offences are created for contravening a provision of the Act or regulations and maximum penalties of \$10,000 for an individual and \$50,000 for a corporation are imposed.

Bill 54

1985

**An Act to Authorize and Regulate the
Payment by the Minister to Specified Persons
on Behalf of Specified Classes of Persons for the
Dispensing of Specified Drugs**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

“designated” means designated by the regulations;

“drug” means a drug as defined in clause 113 (1) (d) of the *Health Disciplines Act*;

R.S.O. 1980,
c. 196

“inspector” means a person appointed under section 9;

“listed drug” means a drug designated as a listed drug;

“listed substance” means a substance, other than a drug, designated as a listed substance;

“Minister” means the Minister of Health;

“operator of a pharmacy” means,

(a) the holder of a certificate of accreditation for the operation of a pharmacy under section 135 of the *Health Disciplines Act*, or

(b) the operator of a pharmacy operated in or by a hospital that is a public hospital under the *Public Hospitals Act*;

R.S.O. 1980,
c. 410

“physician” means a person licensed to engage in the practice of medicine under Part III of the *Health Disciplines Act*;

“prescription” means a direction from a person authorized to prescribe drugs within the scope of his or her practice of a

health discipline directing the dispensing of a drug or mixture of drugs for a specified person;

“regulations” means the regulations made under this Act.

Eligible persons

2.—(1) A person who is a member of a designated class of persons is an eligible person.

Persons deemed eligible persons
R.S.O. 1980, c. 151

(2) This Act applies to persons entitled to receive drug benefits under the *Family Benefits Act* and the regulations under it as if those persons were eligible persons.

Application of this Act
R.S.O. 1980, c. 197

3. This Act applies in respect of the supplying of listed drugs for eligible persons unless that supplying is an insured service as defined in the *Health Insurance Act*.

Billing prohibited

4.—(1) No operator of a pharmacy shall charge, or accept payment from, a person other than the Minister in respect of supplying a listed drug for an eligible person pursuant to a prescription, unless the charge or payment is authorized by the regulations.

Idem

(2) No physician shall charge, or accept payment from, a person other than the Minister in respect of supplying a listed drug for an eligible person, unless the charge or payment is authorized by the regulations.

Payment of claim of operator

5.—(1) An operator of a pharmacy who submits to the Minister a claim for payment in respect of supplying a listed drug for an eligible person pursuant to a prescription is entitled to be paid by the Minister the amount provided for by the regulations.

Agreement re price

(2) The Minister may pay an operator of a pharmacy an amount different from the amount provided for by the regulations in respect of a claim under subsection (1) if the Minister has a written agreement to that effect with the operator.

Payment of claim of physician

(3) A physician who submits to the Minister a claim for payment in respect of supplying a listed drug for an eligible person is entitled to be paid by the Minister the amount provided for by the regulations.

Information in claim

(4) The person submitting a claim under subsection (1) or (3) shall include in it the information prescribed by the regulations.

Unlisted drugs, special case

6.—(1) If a physician informs the Minister that the proper treatment of a patient who is an eligible person requires the

administration of a drug that is not a listed drug, the Minister may make this Act apply in respect of the supplying of that drug as if it were a listed drug by so notifying the physician.

(2) An operator of a pharmacy is not liable for contravening this Act or the regulations in respect of supplying a drug referred to in subsection (1) unless the operator has received notice that this Act applies to that supplying.

Notice to operator

7.—(1) The Minister may make an agreement with a supplier of a listed substance, providing for payment of a specified amount for supplying the listed substance to an eligible person under the direction of a physician.

Agreement re listed substance

(2) Except as the agreement authorizes, the supplier shall not charge, or accept payment from, any person other than the Minister for supplying the listed substance to an eligible person under the direction of a physician.

Supplier not to charge

8. No operator of a pharmacy shall refuse to supply a listed drug for an eligible person in order to avoid the operation of a provision of this Act.

Refusal to dispense prohibited

9.—(1) The Minister may appoint inspectors for the purposes of this section.

Inspectors

(2) An inspector or any person acting under the inspector's instructions may examine any records, in whatever form, in the possession or under the control of an operator of a pharmacy or a physician, if the records may be relevant to determine the accuracy and completeness of any information required to be submitted under this Act or the regulations.

Examine books

(3) A person carrying out an inspection may, upon giving a receipt therefor, take away a record for the purpose of making a copy, but the copy shall be made with reasonable dispatch and the record shall be promptly thereafter returned.

Copies

(4) An inspector or a person acting under the inspector's instructions may at any reasonable time, on producing proper identification, enter business premises where the inspector or person believes a record referred to in subsection (2) may be located for the purpose of an inspection.

Entry

10.—(1) A person who,

Offence

- (a) contravenes section 4 (charges a person other than the Minister);

- (b) contravenes subsection 7 (2) (supplier charges contrary to agreement);
- (c) contravenes section 8 (refuses to dispense);
- (d) refuses to submit information or knowingly furnishes false or incomplete information required to be submitted under this Act or the regulations; or
- (e) obstructs a person carrying out an inspection under section 9,

and any director, officer, employee or agent of a corporation who authorizes, permits or concurs in such a contravention by the corporation, is guilty of an offence and on conviction is liable to a penalty of not more than \$10,000.

Idem

(2) The maximum penalty that may be imposed upon a corporation is \$50,000 and not as provided in subsection (1).

Regulations

11.—(1) The Lieutenant Governor in Council may make regulations,

- (a) designating eligible classes of persons for the purposes of section 2;
- (b) designating drugs as listed drugs;
- (c) designating substances other than drugs that are listed substances;
- (d) authorizing the charges that are permitted under section 4;
- (e) prescribing the information to be included in a claim under subsection 5 (4);
- (f) respecting the amounts payable by the Minister under section 5;
- (g) requiring operators of pharmacies to file reports to the Minister concerning the cost to them of purchasing any drugs and prescribing the information to be included in such reports and the frequency with which such reports are to be made;
- (h) requiring operators of pharmacies and physicians to retain specified records respecting their purchase of drugs for the purposes of this Act and prescribing the period of time those records shall be retained;

- (i) respecting any matter considered necessary or advisable to carry out the intent and purposes of this Act.

(2) A regulation made under clause (1) (f) may, Idem

- (a) provide for a specified amount, provide one or more methods for determining the amount or authorize the Minister to determine the amount payable in respect of each drug or drug product; and

- (b) provide for a specified amount or provide a method for determining a fee or allowance for dispensing a drug.

(3) A regulation made under clause (1) (f) may establish Idem
classes of operators of pharmacies, physicians, suppliers of listed substances and eligible persons and provide for an amount payable under subsection (2) in respect of each class.

(4) A regulation made under this section may be general or Idem
particular in its application.

(5) A regulation is, if it so provides, effective with reference Retroactive
to a period before it is filed.

12.—(1) Section 7 is repealed and the following substituted therefor: s. 7,
re-enacted

7. This Act and the regulations apply to a supplier of a listed substance who meets the criteria prescribed in the regulations in respect of the supplying of the substance to an eligible person under the direction of a physician as if the supplier was an operator of a pharmacy and the substance was a listed drug. Payment for
substance

(2) Clause 10 (1) (b) is repealed. s. 10 (1) (b),
repealed

(3) Subsection 11 (1) is amended by adding thereto the following clause: s. 11 (1),
amended

- (fa) prescribing criteria for the purposes of section 7 (application of Act to supplier).

13. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commence-
ment

14. The short title of this Act is the *Ontario Drug Benefit Act, 1985*. Short title

1ST SESSION, 33RD LEGISLATURE, ONTARIO

34 ELIZABETH II, 1985

Bill 55

An Act to provide for the Protection of the Public in respect of the Cost of Certain Prescription Drugs

The Hon. M. Elston
Minister of Health

<i>1st Reading</i>	November 7th, 1985
<i>2nd Reading</i>	
<i>3rd Reading</i>	
<i>Royal Assent</i>	



EXPLANATORY NOTES

This Act is based on an amended version of section 155 of the *Health Disciplines Act*.

The Lieutenant Governor in Council is authorized to designate prescription drug products as interchangeable with one another for the purposes of this Act. If a particular interchangeable product is named in a prescription and the prescription does not say "no substitutions", the pharmacist is allowed, and on the customer's request required, to dispense an interchangeable product. The pharmacist cannot dispense the named drug without informing the customer of the right to request an interchangeable product. If a prescription names a generic drug for which there are interchangeable products, the pharmacist is required to dispense an interchangeable product. Pharmacists are required to set, post and inform customers of their maximum dispensing fee for interchangeable products. The Executive Council is authorized to make regulations concerning the amounts to be charged for selling interchangeable products. Pharmacists and physicians are protected from liability for dispensing interchangeable products under this Act.

For all prescription drugs, pharmacists are required to dispense the entire quantity prescribed unless the customer consents to or the regulations authorize a lesser quantity.

The Lieutenant Governor in Council can assign enforcement of this Act to one of its members or to the Ontario College of Pharmacists. The person assigned to enforce the Act is authorized to inspect records of pharmacists to ensure compliance with the Act.

Offences are created for contravening a provision of the Act or regulations and maximum penalties of \$10,000 for an individual and \$50,000 for a corporation are imposed.



Bill 55

1985

**An Act to provide for the
Protection of the Public in respect of the
Cost of Certain Prescription Drugs**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

“designated” means designated by the regulations;

“drug” means a drug as defined in clause 113 (1) (d) of the *Health Disciplines Act*;

R.S.O. 1980,
c. 196

“inspector” means a person appointed under section 10 of this Act;

“interchangeable product” means a drug or combination of drugs identified by a specific product name or manufacturer and designated as interchangeable with one or more other such products;

“operator of a pharmacy” means,

(a) the holder of a certificate of accreditation for the operation of a pharmacy under section 135 of the *Health Disciplines Act*, or

(b) the operator of a pharmacy operated in a hospital approved as a public hospital under the *Public Hospitals Act*;

R.S.O. 1980,
c. 410

“prescription” means a direction from a person authorized to prescribe drugs within the scope of his or her practice of a health discipline directing the dispensing of a drug or mixture of drugs for a specified person;

“regulations” means the regulations made under this Act.

Substitution
where named
product

2.—(1) If a prescription directs the dispensing of a specific interchangeable product, the dispenser may dispense in its place another product that is designated as interchangeable with it.

Request for
interchange-
able
product

(2) If a prescription directs the dispensing of a specific interchangeable product, the dispenser, on the request of the person presenting the prescription, shall dispense in its place another product that is designated as interchangeable with it.

Inform
customer

(3) If a person presents a prescription that directs the dispensing of a specific interchangeable product, the dispenser shall not dispense that product without informing the person, in the manner prescribed by the regulations, of the right to request an interchangeable product.

Exception

(4) Subsections (1), (2) and (3) do not apply if the person issuing the prescription directs in the prescription that there shall be no substitutions.

Dispensing
generic
drug

3. If a prescription directs the dispensing of a drug for which there are interchangeable products without identifying a specific product name or manufacturer, the dispenser shall dispense an interchangeable product of that drug.

Maximum
dispensing
fee

4.—(1) Every operator of a pharmacy shall set a single maximum dispensing fee to be charged in respect of dispensing interchangeable products and shall file a statement with the Registrar of the Ontario College of Pharmacists setting out that fee.

Notify
customers

(2) Every operator of a pharmacy shall post in the pharmacy, in the manner prescribed by the regulations, a notice containing the fee set under subsection (1) and any other information prescribed by the regulations respecting the charge for interchangeable products.

Maximum
charge for
supplying
interchange-
able
products

5. No person shall charge more than the maximum amount provided for by the regulations for supplying an interchangeable product pursuant to a prescription.

No
liability
for
dispensing
interchange-
able
products

6. If an interchangeable product is dispensed in accordance with this Act, no action or other proceeding lies or shall be instituted against the person who issued the prescription or the dispenser on the grounds that an interchangeable product other than the one prescribed was dispensed.

Dispense
entire
quantity

7.—(1) Every person who dispenses a drug pursuant to a prescription shall dispense the entire quantity of the drug pre-

scribed at one time unless before the drug is dispensed the person presenting the prescription in writing authorizes the dispensing of the drug in smaller quantities.

(2) Despite subsection (1), the regulations may authorize dispensing a drug in less than the entire quantity prescribed under specified conditions. Exception

8. Every person who dispenses a drug pursuant to a prescription shall provide with the drug, in the manner prescribed by the regulations, particulars of the amount charged. Inform customer of cost of drugs

9. The Lieutenant Governor in Council may by regulation assign to a member of the Executive Council or to the Ontario College of Pharmacists the authority for enforcing this Act. Enforcement of Act

10.—(1) The person assigned the responsibility for enforcing this Act may appoint inspectors for the purposes of this Act. Inspectors

(2) An inspector or any person acting under the inspector's instructions may inspect any pharmacy and examine any records in whatever form in the possession or under the control of the operator of the pharmacy if those records are relevant to determine whether this Act is being complied with. Examine books

(3) A person carrying out an inspection may, upon giving a receipt therefor, take away a record for the purpose of making a copy, but the copy shall be made with reasonable dispatch and the record shall be promptly thereafter returned. Copies

(4) An inspector or a person acting under the inspector's instructions may at any reasonable time on producing proper identification enter any business premises where the inspector or person believes a record referred to in subsection (2) may be located for the purpose of an inspection. Entry

11.—(1) Any person who, Offence

- (a) contravenes subsection 2 (2) (dispense product requested);
- (b) contravenes subsection 2 (3) (inform customer of interchangeable product);
- (c) contravenes section 3 (dispense interchangeable when generic prescribed);
- (d) contravenes section 4 (maximum dispensing fee set and posted);

- (e) contravenes section 5 (maximum allowable charge);
- (f) contravenes section 7 (dispense entire quantity);
- (g) contravenes section 8 (inform person of cost); or
- (h) obstructs any person carrying out an inspection under section 10,

and any director, officer, employee or agent of a corporation who authorizes, permits or concurs in such a contravention by a corporation is guilty of an offence under this Act and liable to a penalty of not more than \$10,000.

Idem

(2) The maximum penalty that may be imposed upon a corporation is \$50,000 and not as provided in subsection (1).

Regulations

12.—(1) The Lieutenant Governor in Council may make regulations,

- (a) designating products as interchangeable with other products for the purposes of this Act;
- (b) prescribing the manner in which persons shall be informed of the right to request an interchangeable product (subsection 2 (3));
- (c) prescribing the information to be included in a notice (subsection 4 (2)) and the manner of posting a notice;
- (d) providing for the maximum amounts chargeable for interchangeable drugs (section 5);
- (e) authorizing dispensing a drug in less than the entire quantity prescribed and specifying the conditions under which that authority is to apply (subsection 7 (2));
- (f) prescribing the information concerning cost to be provided on sale and how it is to be provided (section 8);
- (g) assigning the responsibility for enforcing this Act;
- (h) requiring operators of pharmacies to retain specified records respecting their purchase of drugs for the purposes of this Act and prescribing the period of time those records shall be retained;

- (i) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Act.

(2) A regulation made under clause (1) (d) may, Idem

- (a) prescribe a specified amount or one or more methods for determining the maximum amount payable for each interchangeable product;
- (b) prescribe a specified amount or method for determining a fee or allowance to be charged in respect of each interchangeable product sold; and
- (c) limit the frequency with which a fee or allowance may be charged.

(3) A regulation made under clause (1) (d) may establish Idem
different classes of operators of pharmacies and provide for a different amount payable under subsection (1) in respect of each class.

(4) A regulation made under this section may be general or Idem
particular in its application.

13.—(1) Clauses 113 (1) (e) and (i) of the *Health Disciplines Act*, being chapter 196 of the Revised Statutes of Ontario, 1980, are repealed.

(2) Section 155 of the said Act is repealed.

(3) Clause 158 (2) (b) of the said Act is repealed.

14. This Act comes into force on a day to be named by Commence-
ment
proclamation of the Lieutenant Governor.

15. The short title of this Act is the *Prescription Drug Cost* Short title
Regulation Act, 1985.

Bill 56

An Act to provide for the Observance of Remembrance Day

Mr. Foulds

1st Reading November 7th, 1985
2nd Reading
3rd Reading
Royal Assent



EXPLANATORY NOTE

The Bill is intended to ensure that Remembrance Day is observed as a general holiday on November 11th.



Bill 56

1985

**An Act to provide for the
Observance of Remembrance Day**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.** Remembrance Day, being the 11th day of November in each year, is a public holiday for the purposes of Part VII of the *Employment Standards Act* and is a school holiday for the purposes of the *Education Act*. Holiday
proclaimed
R.S.O. 1980,
cc. 137, 129
- 2.** This Act comes into force on the day it receives Royal Assent. Commence-
ment
- 3.** The short title of this Act is the *Remembrance Day Act*, 1985. Short title

Bill 57

An Act to amend the Assessment Act

The Hon. R. Nixon
Minister of Revenue



1st Reading November 8th, 1985
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTES

SECTION 1. The amendment to subsection 63 (1) of the Act provides for the return of assessment rolls for municipal taxation at present levels of assessment except where a reassessment is introduced by proclamation at full market value or by equalization of assessment based on market value. Subsection 63 (1) now reads as follows:

(1) Subject to the other provisions of this Act and to the alterations, corrections, additions and amendments authorized by this Act, and for the purpose of any special or general Act,

- (a) the assessment roll of a municipality to be returned in the year 1974 shall be the assessment of all real property as set forth in the assessment roll returned for the year 1970 for taxation in the year 1971 as amended, added to or otherwise altered up to the third Tuesday following the 1st day of December, 1974;*
- (b) the assessment roll of a municipality to be returned in the year 1975 shall be the assessment of all real property as set forth in the assessment roll returned for the year 1974 for taxation in the year 1975 as amended, added to or otherwise altered up to the third Tuesday following the 1st day of December, 1975;*
- (c) the assessment roll of a municipality to be returned in the year 1976 shall be the assessment of all real property as set forth in the assessment roll returned for the year 1975 for taxation in the year 1976 as amended, added to or otherwise altered up to the third Tuesday following the 1st day of December, 1976;*
- (d) subject to subsection (2), the assessment roll of a municipality to be returned in the year 1977 shall be the assessment of all real property as set forth in the assessment roll returned for the year 1976 for taxation in the year 1977 as amended, added to or otherwise altered up to the third Tuesday following the 1st day of December, 1977;*
- (e) subject to subsection (2), the assessment roll of a municipality to be returned in the year 1978 shall be the assessment of all real property as set forth in the assessment roll returned for the year 1977 for taxation in the year 1978 as amended, added to or otherwise altered up to the third Tuesday following the 1st day of December, 1978;*
- (f) subject to subsection (2), the assessment roll of a municipality to be returned in the year 1979 shall be the assessment of all real property as set forth in the assessment roll returned for the year 1978 for taxation in the year 1979 as amended, added to or otherwise altered up to the date when the assessment roll for taxation in the year 1980 is returned;*
- (g) subject to subsection (2), the assessment roll of a municipality to be returned in the year 1980 shall be the assessment of all real property as set forth in the assessment roll returned for the year 1979 for taxation in the year 1980 as amended, added to or otherwise altered up to the date when the assessment roll for taxation in the year 1981 is returned;*
- (h) subject to subsection (2) and to subsection 65 (3), the assessment roll of a municipality to be returned in the year 1981 shall be the assessment of all real property as set forth in the assessment roll returned for the year 1980 for taxation in the year 1981 as amended, added to or otherwise altered up to the date when the assessment roll for taxation in the year 1982 is returned;*
- (i) subject to subsection (2) and to subsection 65 (3), the assessment roll of a municipality to be returned in the year 1982 shall be the assessment of all real property as set forth in the assessment roll returned for the year 1981 for taxation in the year 1982 as amended, added to or otherwise altered up to the date when the assessment roll for taxation in the year 1983 is returned;*

(j) *subject to subsection (2) and to subsection 65 (3), the assessment roll of a municipality to be returned in the year 1983 shall be the assessment of all real property as set forth in the assessment roll returned for the year 1982 for taxation in the year 1983 as amended, added to or otherwise altered up to the date when the assessment roll for taxation in the year 1984 is returned; and*

(k) *subject to subsection (2) and to subsection 65 (3), the assessment roll of a municipality to be returned in the year 1984 shall be the assessment of all real property as set forth in the assessment roll returned for the year 1983 for taxation in the year 1984 as amended, added to or otherwise altered up to the date when the assessment roll for taxation in the year 1985 is returned,*

provided that, where the assessor is of the opinion that an assessment to be shown on the assessment roll to be returned for the years 1974 to and including 1984 is inequitable with respect to the assessment of similar real property in the vicinity, the assessor may alter the value of the assessment to the extent necessary to make the assessment equitable with the assessment of such similar real property.

SECTION 2. The re-enactment of section 68 is consequent upon the amendment made by section 1 of the Bill. Section 68 now reads as follows:

68. Section 65 ceases to be in force on the 17th day of December, 1985, but shall continue in force for the purpose of any pending complaint, appeal, proceeding or action that will affect taxes for the years 1971 to and including 1985.

SECTION 3. The re-enactment of section 69 relates to the change made by section 1 of the Bill and provides that the provisions of the Act with respect to the depreciation of pipe lines will come into effect on January 1, 1986. Section 69 now reads as follows:

69. Subject to section 70, subsection 24 (6) is not in force and remains inoperative until the 1st day of January, 1985.

Bill 57**1985****An Act to amend the Assessment Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 63 (1) of the *Assessment Act*, being chapter 31 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1981, chapter 47, section 13, 1982, chapter 56, section 4, 1983, chapter 58, section 4 and 1984, chapter 49, section 1, is further amended,

- (a) by striking out “and” at the end of clause (j);
- (b) by adding “and” at the end of clause (k); and
- (c) by striking out all that part of the subsection immediately following clause (k) and inserting in lieu thereof:
 - (l) subject to subsection (2) and to subsection 65 (3), the assessment roll of a municipality to be returned in the year 1985 shall be the assessment of all real property as set forth in the assessment roll returned for the year 1984 for taxation in the year 1985 as amended, added to or otherwise altered up to the date when the assessment roll for taxation in the year 1986 is returned,

provided that, where the assessor is of the opinion that an assessment to be shown on the assessment roll to be returned for the years 1974 to and including 1985 is inequitable with respect to the assessment of similar real property in the vicinity, the assessor may alter the value of the assessment to the extent necessary to make the assessment equitable with the assessment of such similar real property.

2. Section 68 of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 49, section 2, is repealed and the following substituted therefor:

Application

68. Section 65 ceases to be in force on the 16th day of December, 1986, but shall continue in force for the purpose of any pending complaint, appeal, proceeding or action that will affect taxes for the years 1971 to and including 1986.

3. Section 69 of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 49, section 3, is repealed and the following substituted therefor:

Application

69. Subject to section 70, subsection 24 (6) is not in force and remains inoperative until the 1st day of January, 1986.

Commence-
ment

4. This Act comes into force on the 1st day of December, 1985.

Short title

5. The short title of this Act is the *Assessment Amendment Act, 1985*.

Bill 57

(Chapter 9
Statutes of Ontario, 1985)

An Act to amend the Assessment Act

The Hon. R. Nixon
Minister of Revenue



<i>1st Reading</i>	November 8th, 1985
<i>2nd Reading</i>	December 2nd, 1985
<i>3rd Reading</i>	December 2nd, 1985
<i>Royal Assent</i>	December 6th, 1985

Bill 57**1985****An Act to amend the Assessment Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 63 (1) of the *Assessment Act*, being chapter 31 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1981, chapter 47, section 13, 1982, chapter 56, section 4, 1983, chapter 58, section 4 and 1984, chapter 49, section 1, is further amended,

- (a) by striking out “and” at the end of clause (j);
- (b) by adding “and” at the end of clause (k); and
- (c) by striking out all that part of the subsection immediately following clause (k) and inserting in lieu thereof:
 - (l) subject to subsection (2) and to subsection 65 (3), the assessment roll of a municipality to be returned in the year 1985 shall be the assessment of all real property as set forth in the assessment roll returned for the year 1984 for taxation in the year 1985 as amended, added to or otherwise altered up to the date when the assessment roll for taxation in the year 1986 is returned,

provided that, where the assessor is of the opinion that an assessment to be shown on the assessment roll to be returned for the years 1974 to and including 1985 is inequitable with respect to the assessment of similar real property in the vicinity, the assessor may alter the value of the assessment to the extent necessary to make the assessment equitable with the assessment of such similar real property.

2. Section 68 of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 49, section 2, is repealed and the following substituted therefor:

Application

68. Section 65 ceases to be in force on the 16th day of December, 1986, but shall continue in force for the purpose of any pending complaint, appeal, proceeding or action that will affect taxes for the years 1971 to and including 1986.

3. Section 69 of the said Act, as re-enacted by the Statutes of Ontario, 1984, chapter 49, section 3, is repealed and the following substituted therefor:

Application

69. Subject to section 70, subsection 24 (6) is not in force and remains inoperative until the 1st day of January, 1986.

Commence-
ment

4. This Act comes into force on the 1st day of December, 1985.

Short title

5. The short title of this Act is the *Assessment Amendment Act, 1985*.

Bill 58

An Act to amend the Time Act

Mr. McClellan



1st Reading November 18th, 1985
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTE

The Bill would extend daylight saving time from the first Sunday in April to the first Sunday in November, subject to variation by regulation, thus providing for seven months of daylight saving time per year in Ontario.

Daylight saving time is not now subject to provincial or federal legislation. It is now applied by municipal ordinance from the last Sunday in April, i.e., about 8 weeks before the summer equinox on June 21, to the last Sunday in October, i.e., approximately four months after June 21. The Bill would extend this to a period from about three months before to about four months after the summer equinox.



Bill 58

1985

An Act to amend the Time Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 2 (3) of the *Time Act*, being chapter 501 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

(3) Standard time as fixed by subsections (1) and (2) shall be advanced by one hour from 2 a.m. on the first Sunday in April of each year until 2 a.m. on the first Sunday in November of each year. Daylight
saving time

(4) The Lieutenant Governor in Council may make regulations varying the reckoning of standard time as fixed by subsection (1), (2) or (3). Power
to vary

2. This Act comes into force on the day it receives Royal Assent. Commence-
ment

3. The short title of this Act is the *Time Amendment Act*, Short title
1985.

1ST SESSION, 33RD LEGISLATURE, ONTARIO

34 ELIZABETH II, 1985

Bill 59

An Act to amend the Residential Tenancies Act

Mr. McFadden

1st Reading November 21st, 1985
2nd Reading
3rd Reading
Royal Assent



EXPLANATORY NOTE

The Bill removes the exemption from rent review granted to non-profit housing projects.



Bill 59

1985

An Act to amend the Residential Tenancies Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Clause 134 (1) (b) of the *Residential Tenancies Act*, being chapter 452 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

- (b) a rental unit situate in a non-profit co-operative housing project as defined in the *National Housing Act* (Canada). R.S.C. 1970.
c. N-10

2. This Act comes into force on the day it receives Royal Assent. Commence-
ment

3. The short title of this Act is the *Residential Tenancies Amendment Act, 1985*. Short title

Bill 60

An Act respecting a Register of Ontario Land Information

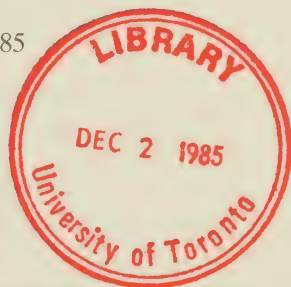
Mr. Martel

1st Reading November 21st, 1985

2nd Reading

3rd Reading

Royal Assent



EXPLANATORY NOTE

The Bill would authorize the creation of a public register showing the ownership of all privately held land in Ontario, the use of the land, and whether its owner is a resident or non-resident of Canada. Every owner, purchaser or vendor of an interest in land in Ontario would be subject to a reporting requirement.



Bill 60**1985**

**An Act respecting a
Register of Ontario Land Information**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) In this Act,

Interpretation

- (a) “Director” means the Director appointed under this Act;
- (b) “interest in land” means the fee or the equity of redemption in or a power or right to grant, assign or exercise a power of appointment in respect of land;
- (c) “non-resident corporation” means a corporation, regardless of the jurisdiction in which it was formed or organized, that,
 - (i) is controlled directly or indirectly by one or more non-resident persons,
 - (ii) has issued shares to which are attached 50 per cent or more of the voting rights ordinarily exercisable at meetings of shareholders to one or more non-resident persons,
 - (iii) has issued shares to which are attached 25 per cent or more of the voting rights ordinarily exercisable at meetings of shareholders to any one non-resident person,
 - (iv) has a board of directors, one-half or more of which is composed of non-resident persons, or
 - (v) in the case of a corporation without share capital, has a membership, one-half or more of which is composed of non-resident persons;

(d) “non-resident person” means,

(i) an individual who is not ordinarily resident in Canada or who, if ordinarily resident in Canada, is neither a Canadian citizen nor a person who has been lawfully admitted to Canada for permanent residence in Canada,

(ii) a non-resident corporation,

(iii) a partnership, syndicate, association or other organization of which one-half or more of the members are non-resident persons or in which interests representing 50 per cent or more of the total value of the property of the partnership, syndicate, association or organization are beneficially owned by non-resident persons, or

(iv) a trust in which non-resident persons within the meaning of subclause (i), (ii) or (iii) hold 50 per cent or more of the beneficial interests in the corpus of the trust or in the income arising therefrom;

(e) “prescribed” means prescribed by the regulations made under this Act.

Ordinarily
resident
defined

(2) For the purpose of clause (1) (d), an individual shall be considered to be ordinarily resident in Canada if at the time the expression is being applied, the individual,

(a) has sojourned in Canada during the next preceding twenty-four months for a period of, or periods the aggregate of which is, 366 days or more;

(b) is a member of the Canadian Forces required to reside outside Canada;

(c) is an ambassador, minister, high commissioner, officer or servant of Canada, or is an agent-general, officer or servant of a province of Canada, and resided in Canada immediately prior to appointment or employment by Canada or a province of Canada or is entitled to receive representation allowances;

(d) is performing services in a country other than Canada under an international development assistance program of the Government of Canada that is pre-

scribed for the purposes of paragraph 250 (1) (d) of the *Income Tax Act* (Canada), and resided in Canada at any time in the three month period preceding the day on which such services commenced; or

R.S.C. 1952,
c. 148

- (e) resides outside Canada and is the spouse or child of, and is living with, an individual described in clause (b), (c) or (d).

2.—(1) Every person who holds an interest in land in Ontario on the 31st day of December, 1985 shall, on or before the 1st day of April, 1986, file with the Director a report in the prescribed form,

Report re
ownership
and use

- (a) setting out the person's interest in the land;
- (b) describing the use of the land;
- (c) declaring whether the person is a non-resident person; and
- (d) setting out the municipal address and a brief description of the land.

(2) Every person who acquires an interest in land in Ontario, whether by way of a conveyance, purchase of shares in a corporation that has such an interest, or otherwise, on or after the 31st day of December, 1985, shall, within ninety days after the date of the conveyance or acquisition, file with the Director a report in the prescribed form,

Idem

- (a) setting out the person's interest in the land;
- (b) describing the use of the land;
- (c) declaring whether the person is a non-resident person; and
- (d) setting out the municipal address and a brief description of the land.

(3) Every person who disposes of or conveys away an interest in land in Ontario after filing a report with respect to the land under subsection (1) or (2) shall, within ninety days after the date of the disposition or conveyance, file with the Director a notice in the prescribed form.

Notice re
disposition

(4) Where a person files a report or notice under this section respecting an interest in land and the report or notice or accompanying material,

Where
registration
report not
required

- (a) provides information on other persons who are also required to file a report or notice respecting the land; and
- (b) the information supplied under clause (a) is equivalent in nature and extent to the information required of a person filing a report or notice,

those other persons are not required to file a separate registration report respecting that land.

When
resident
deemed to
be
non-resident

3. For the purposes of this Act, where a person who is a resident of Canada has acquired or acquires an interest in land and knowingly holds that interest on behalf of a non-resident person, by agreement or otherwise, the first-named person shall be deemed to be a non-resident person in respect of that interest.

Contents of
report and
notice

4. Every report and notice shall set forth the prescribed information.

Appointment
of Director

5. The Minister of Municipal Affairs may appoint a Director of a branch of the Ministry to administer and enforce this Act.

False
information

6. No person shall furnish false information in any report or notice filed under this Act.

Offence

7. Every person who contravenes any provision of this Act or the regulations and every director or officer of a corporation who knowingly concurs in such contravention is guilty of an offence and on conviction is liable to a fine of not more than \$5,000.

Public
register

8. The Director shall maintain all reports and notices filed under section 2 in a register and shall make the register available for inspection and copying by the public at the Director's office during ordinary business hours.

Regulations

9. The Lieutenant Governor in Council may make regulations,

- (a) prescribing the form of and the information to be contained in a report under subsection 2 (1) or (2);
- (b) prescribing the form of and the information to be contained in a notice under subsection 2 (3);
- (c) prescribing forms other than those mentioned in clauses (a) and (b) and providing for their use.

10. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commence-
ment

11. The short title of this Act is the *Ontario Land Information Act, 1985*. Short title

Bill 61

An Act to amend the Employment Standards Act

Mr. Mackenzie

1st Reading November 21st, 1985
2nd Reading
3rd Reading
Royal Assent



EXPLANATORY NOTES

SECTION 1. The proposed new section 29 increases the vacation period to which an employee is entitled under the Act. Currently, the Act provides a two week vacation period for each employee that does not vary with the amount of employment service.

SECTION 2. The proposed amendment is complementary to section 1 of the Bill. Subsection 30 (1) of the Act as it currently reads is set out below with the amended portions underlined:

(1) The employer shall determine the period when an employee may take the vacation to which he is entitled under section 29, which may be a two week period or two periods of one week each, but in any case the employee shall be given his vacation not later than ten months after the end of the twelve month period for which the vacation was given.

SECTION 3. The proposed amendment is complementary to section 1 of the Bill. Section 31 of the Act as it currently reads is set out below with the amended portions underlined:

31. Where the employment of an employee ceases before the completion of a twelve month period of employment or the employee has not been given a vacation with pay pursuant to section 29, the employer shall pay to the employee an amount equal to 4 per cent of the wages of the employee in any twelve month period or periods or part thereof and in calculating wages no account shall be taken of any vacation pay previously paid.

Bill 61

1985

An Act to amend the Employment Standards Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 29 of the *Employment Standards Act*, being chapter 137 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

29.—(1) Every employer shall give to each employee a vacation with pay of at least, Vacations

- (a) two weeks in each year upon the completion of twelve months of employment;
- (b) three weeks in each year upon the completion of sixty months of employment;
- (c) four weeks in each year upon the completion of 120 months of employment; and
- (d) five weeks in each year upon the completion of 240 months of employment.

(2) The amount of pay for a vacation shall be not less than Idem
an amount equal to 2 per cent of the annual wages of the employee for each week of vacation to which the employee is entitled under subsection (1) and in calculating wages no account shall be taken of any vacation pay previously paid.

2. Subsection 30 (1) of the said Act is repealed and the following substituted therefor:

(1) The employer shall determine the period when an employee may take the vacation to which he or she is entitled under section 29, which may be a consecutive period or periods of one week each, but in any case the employee shall be given his or her vacation not later than six months after the end of the twelve month period for which the vacation was given. When
vacation
to be taken

3. Section 31 of the said Act is repealed and the following substituted therefor:

Vacation
pay

31. Where the employment of an employee ceases before the completion of a twelve month period of employment or the employee has not been given a vacation with pay under section 29, the employer shall pay to the employee an amount equal to 2 per cent of the annual wages of the employee for each week of vacation to which the employee is entitled under section 29, and in calculating wages no account shall be taken of any vacation pay previously paid.

Commence-
ment

4. This Act comes into force on the day it receives Royal Assent.

Short title

5. The short title of this Act is the *Employment Standards Amendment Act, 1985*.

Bill 62

An Act to protect and enhance the Quality of Drinking Water in Ontario

Mrs. Grier



1st Reading November 21st, 1985

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTES

The Bill is intended to protect and enhance drinking water quality in Ontario.

It provides opportunities for public involvement in the making of regulations to set maximum permissible levels for contaminants and other substances in drinking water. These regulations would apply to both public and private water systems.

The operator of a public water system is required to monitor water quality regularly and notify the users of the system as well as the Minister of the Environment of the results. Any user of a private water system may have the water tested by the Ministry of the Environment.

It is an offence for the operator of a public water system to provide water which contravenes the regulations or to fail to comply with monitoring and notice requirements. It is an offence for anyone to pollute a public or private water system.

The Bill permits water users to sue to recover damages for contraventions of the Act and gives any person standing to seek judicial review against the Minister of the Environment.

The Minister is authorized to commission research into matters related to drinking water quality and an advisory council is created to assist the Minister.



Bill 62

1985

**An Act to protect and enhance the
Quality of Drinking Water in Ontario**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Interpretation

- (a) “Board” means the Water Review Board;
- (b) “contaminant” means any biological, chemical or physical agent or combination thereof prescribed as a contaminant;
- (c) “Gazette” means *The Ontario Gazette*;
- (d) “Minister” means the Minister of the Environment;
- (e) “prescribed” means prescribed by the regulations;
- (f) “private water system” means any water system that has fewer than fifteen service connections or regularly serves fewer than twenty-five individuals;
- (g) “public water supplier” means a person who operates a public water system;
- (h) “public water system” means any water system that has fifteen or more service connections or regularly serves twenty-five or more individuals;
- (i) “substance” means anything that affects the odour, appearance or taste of drinking water and is prescribed as a substance;
- (j) “user”, when used in connection with a water system or public water supplier, means a person who obtains water from the system or supplier;

- (k) "water system" means any works for the collection, supply and distribution of water that may be used as drinking water.

Purpose

2. The purpose of this Act is the protection and enhancement of drinking water quality throughout Ontario.

DUTIES OF SUPPLIERS

Duties of
supplier

3. Every public water supplier shall,

- (a) conduct complete water tests in accordance with the regulations, monthly or more frequently as may be prescribed by regulation, to establish contaminant and substance levels and compliance with prescribed standards;
- (b) promptly publish the results of all tests conducted under clause (a) in a newspaper that is published in the community where the supplier's regular users reside;
- (c) supply the results of all tests conducted under clause (a) to every user together with the regular water bill;
- (d) promptly report the results of all tests conducted under clause (a) to the Minister;
- (e) keep full records of all tests conducted under clause (a) and make them available to any person upon request;
- (f) where a test reveals that maximum permitted contaminant levels or maximum permitted substance levels are exceeded or prescribed standards are not adhered to,
 - (i) take immediate steps to cause the water to comply with this Act and the regulations, and
 - (ii) make an alternate supply of safe drinking water available to all users until the main supply complies with this Act and the regulations.

PUBLIC INVOLVEMENT IN REGULATION-MAKING

Draft
regulations
concerning
contaminants

4.—(1) The Minister shall within 180 days after the day this Act comes into force publish in the Gazette a notice set-

ting forth proposed regulations under clause 14 (2) (b) and calling for briefs and submissions in connection therewith.

(2) Any person may within ninety days after the publication of a notice under subsection (1) or (6) require the Board to hold a hearing into any of the proposed regulations by delivering a notice of objection to the Board. Objection

(3) The Board shall hold any hearing required under subsection (2) expeditiously and may consolidate any such hearings where common issues are raised. Hearing

(4) Upon completion of all hearings under subsection (2), the Board shall report its findings and conclusions to the Minister and shall provide a copy of the report to every person who delivered a notice of objection under subsection (2). Report

(5) Regulations under clause 14 (2) (b) shall come into force on or before a day fifteen months after the coming into force of this Act. Effective date

(6) Before further regulations are made or existing regulations are revoked or amended under clause 14 (2) (b), the Minister shall publish in the Gazette a notice setting forth the proposed regulations and calling for briefs and submissions in connection therewith. Further regulations

5.—(1) The Minister shall within 240 days after the day this Act comes into force publish in the Gazette a notice setting forth proposed regulations under clause 14 (2) (c) and calling for briefs and submissions in connection therewith. Draft regulations concerning substances

(2) Regulations under clause 14 (2) (c) shall come into force on or before a day fifteen months after the coming into force of this Act. Effective date

(3) Before further regulations are made or existing regulations are revoked or amended under clause 14 (2) (c), the Minister shall publish in the Gazette a notice setting forth the proposed regulations and calling for briefs and submissions in connection therewith. Further regulations

OFFENCES

6.—(1) No public water supplier shall cause or permit to be supplied to users, Supplying unsafe water

- (a) water containing any contaminant that exceeds the applicable maximum permitted level; or

- (b) water containing any substance that contravenes a prescribed standard or exceeds the applicable maximum permitted level.

Polluting
water
system

(2) No person shall deposit in, add to, emit or discharge into a public water system or a private water system any contaminant or substance so as to cause the water to exceed the maximum permitted level for the contaminant or substance or to contravene a prescribed standard.

Penalties

7. Any person who contravenes this Act or the regulations is guilty of an offence and on conviction is liable to,

- (a) in the case of a contravention of section 6 that relates to a contaminant, a fine not exceeding \$50,000; and
- (b) in the case of any other contravention, a fine not exceeding \$25,000.

PRIVATE REMEDIES

Action for
damages

8.—(1) Any person may, by action, recover damages caused by a contravention of this Act or the regulations from the person who committed the contravention.

Judicial
review

(2) Any person may apply for judicial review of the Minister's exercise or non-exercise of any power or fulfilment or non-fulfilment of any duty conferred or imposed on the Minister by this Act, whether or not the person applying is specially affected or has suffered special damages.

WATER REVIEW BOARD AND WATER ADVISORY COUNCIL

Water
Review
Board
established

9.—(1) The Water Review Board is hereby established and shall consist of not fewer than five persons appointed by the Lieutenant Governor in Council, who shall hold office during pleasure and none of whom shall be members of the public service.

Chairman
and vice-
chairman

(2) The Lieutenant Governor in Council may appoint one of the members of the Board as chairman and another of the members as vice-chairman.

Quorum

(3) Three members of the Board constitute a quorum.

Remuneration

(4) The members of the Board may be paid such remuneration and expenses as the Lieutenant Governor in Council from time to time determines.

(5) The chairman may authorize one member of the Board to conduct a hearing by the Board and the member has all the powers of the Board for the purpose of the hearing.

One member
may conduct
hearing

(6) The report of such member may be adopted as the decision of the Board by two other members of the Board, one of whom shall be the chairman or vice-chairman or may be otherwise dealt with as the Board considers proper.

Report

10.—(1) The Water Advisory Council is hereby established and shall consist of not fewer than ten and not more than fifteen persons appointed by the Lieutenant Governor in Council, each to hold office for a term of not more than three years.

Water
Advisory
Council
established

(2) The Lieutenant Governor in Council may appoint one of the members of the Council as chairman and another of the members as vice-chairman.

Chairman
and vice-
chairman

(3) The composition of the Council shall be such as to provide for competent and knowledgeable persons in matters relating to drinking water quality.

Members

(4) A retiring member of the Council is eligible for reappointment.

Reappoint-
ments

(5) The members of the Council may be paid such remuneration and expenses as the Lieutenant Governor in Council from time to time may determine.

Remuneration

11. The Water Advisory Council, through its chairman, shall,

Duties of
Council

(a) advise the Minister as to the results of current research related to,

(i) drinking water quality, and

(ii) contaminants and substances and their effects;
and

(b) consider any matter affecting drinking water quality that the Council or the Minister considers advisable and advise the Minister thereon.

STUDIES

12. The Minister shall cause research to be conducted into,

Research

- (a) the causes, diagnosis, treatment, control and prevention of health effects associated with contaminants or substances;
- (b) the quality, quantity and availability of private water supplies;
- (c) the sources of surface and ground water contamination; and
- (d) methods of treating or purifying drinking water.

Testing of
private
water
system

13. The Minister shall, at the request of any user of a private water system, cause the water to be tested in accordance with the regulations to establish contaminant and substance levels and compliance with prescribed standards.

Regulations

14.—(1) The Lieutenant Governor in Council may make such regulations as are advisable to protect and enhance drinking water quality throughout Ontario.

Idem

(2) Without limiting the generality of subsection (1), the Lieutenant Governor in Council may make regulations,

- (a) designating any biological, chemical or physical agents or combinations thereof as contaminants and prescribing maximum permissible contaminant levels;
- (b) designating anything as a substance, prescribing standards for substances in water and prescribing maximum permissible substance levels;
- (c) respecting procedures for water tests to be conducted under clause 3 (a) and section 13; and
- (d) prescribing greater frequencies than monthly for water tests to be conducted under clause 3 (a) and prescribing the circumstances under which such more frequent tests shall be conducted.

Commence-
ment

15. This Act comes into force on the day it receives Royal Assent.

Short title

16. The short title of this Act is the *Ontario Safe Drinking Water Act, 1985*.

Bill 63

An Act respecting The Wellington County Board of Education and Teachers Dispute

The Hon. S. Conway
Minister of Education



1st Reading November 25th, 1985
2nd Reading
3rd Reading
Royal Assent

Bill 63**1985**

**An Act respecting
The Wellington County Board of Education
and Teachers Dispute**

Whereas The Wellington County Board of Education and its secondary school teachers have been negotiating terms and conditions of employment; and whereas a strike by the secondary school teachers against the board of education has continued since the 16th day of September, 1985; and whereas the board of education and its secondary school teachers have been unable to make an agreement as to terms and conditions of employment; and whereas the Commission has advised the Lieutenant Governor in Council that, in the opinion of the Commission, the continuance of the strike will place in jeopardy the successful completion of courses of study by the students affected; and whereas the public interest, and in particular, the interests of students, requires that the secondary school teachers return to and resume their duties and that means be found for the settlement of the matters in dispute between the board of education and its secondary school teachers;

Preamble

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) In this Act,

Definitions

“board” means The Wellington County Board of Education;

“branch affiliate” means the organization composed of all the teachers employed by the board who are members of The Ontario Secondary School Teachers’ Federation;

“mediator” means the person appointed by the Commission on the 27th day of June, 1985 to assist the parties in renewing their agreement;

“parties” means the board and the branch affiliate;

“school day” has the same meaning as in Ontario Regulation 822/82 (School Year and School Holidays);

“teachers” means the secondary school teachers employed on permanent or probationary contracts by the board.

Idem

R.S.O. 1980,
c. 464

(2) In this Act, “agreement”, “Commission”, “lock-out” and “strike” have the same meanings as in the *School Boards and Teachers Collective Negotiations Act*.

Strike
terminated

2.—(1) The teachers who are on strike against the board shall, on the first school day following the day this Act comes into force, return to and resume their duties in accordance with their contracts of employment and written collective understandings as agreed to by the parties and the recommendations made by the mediator to the parties on the 10th day of November, 1985 and filed with the Commission on the 12th day of November, 1985 and the board shall, on the first school day following the day this Act comes into force, resume the employment of such teachers in accordance with such contracts and written collective understandings and resume the normal operation of the schools in which the teachers are employed.

No strike
or lock-out

(2) During the period from and including the first school day after the day this Act comes into force until the day the document referred to in section 3 is executed or deemed to be in effect, no teacher shall take part in a strike against the board and the board shall not lock out a teacher.

Exception

(3) Nothing in this Act precludes a teacher from not returning to and resuming his or her duties with the board for reasons of health or by mutual consent in writing of the teacher and the board.

Execution
of agreement

3.—(1) Within thirty days after the day this Act comes into force, the parties shall prepare and execute a document containing all of the matters agreed to by the parties and all of the recommendations made by the mediator mentioned in subsection 2 (1), and the document thereupon constitutes an agreement.

Preparation
of agreement
by
Commission

(2) If the parties fail to prepare and execute a document in the form of an agreement in accordance with subsection (1), each of the parties shall notify the Commission forthwith after the end of the period of time mentioned in that subsection and the Commission shall prepare a document in the form of an agreement containing all of the matters agreed to by the parties and all of the recommendations made by the mediator

and the Commission shall submit the document to the parties for execution.

(3) If the parties or either of them fail to execute the document within the period of time fixed by the Commission, and the Commission may fix such period of time, after the date the Commission submits the document to them, the document shall come into effect as though it had been executed by the parties and the document thereupon constitutes an agreement.

Failure to execute agreement

(4) The agreement between the parties shall be for the period from and including the 1st day of September, 1984 to and including the 31st day of August, 1986.

Term of agreement

4.—(1) Every teacher who contravenes any provision of this Act is guilty of an offence and on conviction is liable to a fine of not more than \$500 for each day upon which the contravention occurs or continues.

Contravention of Act by teacher

(2) Every party that contravenes any provision of this Act is guilty of an offence and on conviction is liable to a fine of not more than \$10,000 for each day upon which such contravention occurs or continues.

Contravention of Act by party

(3) Where the branch affiliate is guilty of an offence under this Act, every officer, official or agent thereof who assents to the commission of the offence is guilty of the offence and is liable to a fine of not more than \$500 for each day upon which the contravention by the branch affiliate occurs or continues.

Where branch affiliate guilty of offence

(4) Where the board is convicted of an offence under this Act,

Where board guilty of an offence

- (a) each member of the board; and
- (b) each officer, employee or agent of the board who was in whole or in part responsible for the conduct of that part of the business of the board that gave rise to the offence,

is guilty of an offence, unless he or she satisfies the court that he or she took all reasonable care to prevent the commission of the offence, and is liable to a fine of not more than \$500 for each day upon which the contravention by the employer occurs or continues.

(5) Subsections 77 (5) to (8) and sections 78 and 79 of the *School Boards and Teachers Collective Negotiations Act* apply with necessary modifications as if they were enacted in and form part of this Act.

Application of R.S.O. 1980, c. 464

Commence-
ment

5. This Act comes into force on the day it receives Royal Assent and is repealed on the day on which the agreement between the parties made under this Act comes into operation.

Short title

6. The short title of this Act is the *Wellington County Board of Education and Teachers Dispute Settlement Act, 1985*.

Bill 63

(Chapter 8
Statutes of Ontario, 1985)

An Act respecting The Wellington County Board of Education and Teachers Dispute

The Hon. S. Conway
Minister of Education



<i>1st Reading</i>	November 25th, 1985
<i>2nd Reading</i>	November 26th, 1985
<i>3rd Reading</i>	November 26th, 1985
<i>Royal Assent</i>	November 26th, 1985

Bill 63

1985

**An Act respecting
The Wellington County Board of Education
and Teachers Dispute**

Whereas The Wellington County Board of Education and its secondary school teachers have been negotiating terms and conditions of employment; and whereas a strike by the secondary school teachers against the board of education has continued since the 16th day of September, 1985; and whereas the board of education and its secondary school teachers have been unable to make an agreement as to terms and conditions of employment; and whereas the Commission has advised the Lieutenant Governor in Council that, in the opinion of the Commission, the continuance of the strike will place in jeopardy the successful completion of courses of study by the students affected; and whereas the public interest, and in particular, the interests of students, requires that the secondary school teachers return to and resume their duties and that means be found for the settlement of the matters in dispute between the board of education and its secondary school teachers;

Preamble

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) In this Act,

Definitions

“board” means The Wellington County Board of Education;

“branch affiliate” means the organization composed of all the teachers employed by the board who are members of The Ontario Secondary School Teachers’ Federation;

“mediator” means the person appointed by the Commission on the 27th day of June, 1985 to assist the parties in renewing their agreement;

“parties” means the board and the branch affiliate;

“school day” has the same meaning as in Ontario Regulation 822/82 (School Year and School Holidays);

“teachers” means the secondary school teachers employed on permanent or probationary contracts by the board.

Idem

R.S.O. 1980,
c. 464

(2) In this Act, “agreement”, “Commission”, “lock-out” and “strike” have the same meanings as in the *School Boards and Teachers Collective Negotiations Act*.

Strike
terminated

2.—(1) The teachers who are on strike against the board shall, on the first school day following the day this Act comes into force, return to and resume their duties in accordance with their contracts of employment and written collective understandings as agreed to by the parties and the recommendations made by the mediator to the parties on the 10th day of November, 1985 and filed with the Commission on the 12th day of November, 1985 and the board shall, on the first school day following the day this Act comes into force, resume the employment of such teachers in accordance with such contracts and written collective understandings and resume the normal operation of the schools in which the teachers are employed.

No strike
or lock-out

(2) During the period from and including the first school day after the day this Act comes into force until the day the document referred to in section 3 is executed or deemed to be in effect, no teacher shall take part in a strike against the board and the board shall not lock out a teacher.

Exception

(3) Nothing in this Act precludes a teacher from not returning to and resuming his or her duties with the board for reasons of health or by mutual consent in writing of the teacher and the board.

Execution
of agreement

3.—(1) Within thirty days after the day this Act comes into force, the parties shall prepare and execute a document containing all of the matters agreed to by the parties and all of the recommendations made by the mediator mentioned in subsection 2 (1), and the document thereupon constitutes an agreement.

Preparation
of agreement
by
Commission

(2) If the parties fail to prepare and execute a document in the form of an agreement in accordance with subsection (1), each of the parties shall notify the Commission forthwith after the end of the period of time mentioned in that subsection and the Commission shall prepare a document in the form of an agreement containing all of the matters agreed to by the parties and all of the recommendations made by the mediator

and the Commission shall submit the document to the parties for execution.

(3) If the parties or either of them fail to execute the document within the period of time fixed by the Commission, and the Commission may fix such period of time, after the date the Commission submits the document to them, the document shall come into effect as though it had been executed by the parties and the document thereupon constitutes an agreement.

Failure to execute agreement

(4) The agreement between the parties shall be for the period from and including the 1st day of September, 1984 to and including the 31st day of August, 1986.

Term of agreement

4.—(1) Every teacher who contravenes any provision of this Act is guilty of an offence and on conviction is liable to a fine of not more than \$500 for each day upon which the contravention occurs or continues.

Contravention of Act by teacher

(2) Every party that contravenes any provision of this Act is guilty of an offence and on conviction is liable to a fine of not more than \$10,000 for each day upon which such contravention occurs or continues.

Contravention of Act by party

(3) Where the branch affiliate is guilty of an offence under this Act, every officer, official or agent thereof who assents to the commission of the offence is guilty of the offence and is liable to a fine of not more than \$500 for each day upon which the contravention by the branch affiliate occurs or continues.

Where branch affiliate guilty of offence

(4) Where the board is convicted of an offence under this Act,

Where board guilty of an offence

(a) each member of the board; and

(b) each officer, employee or agent of the board who was in whole or in part responsible for the conduct of that part of the business of the board that gave rise to the offence,

is guilty of an offence, unless he or she satisfies the court that he or she took all reasonable care to prevent the commission of the offence, and is liable to a fine of not more than \$500 for each day upon which the contravention by the employer occurs or continues.

(5) Subsections 77 (5) to (8) and sections 78 and 79 of the *School Boards and Teachers Collective Negotiations Act* apply with necessary modifications as if they were enacted in and form part of this Act.

Application of R.S.O. 1980, c. 464

Commence-
ment

5. This Act comes into force on the day it receives Royal Assent and is repealed on the day on which the agreement between the parties made under this Act comes into operation.

Short title

6. The short title of this Act is the *Wellington County Board of Education and Teachers Dispute Settlement Act, 1985*.

CANON
XB
-B56

Bill 64

An Act to amend the Dog Owners' Liability Act

Mr. Wildman



1st Reading November 25th, 1985
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTE

Under the *Dog Owners' Liability Act*, a dog owner is liable for damages resulting from a bite or attack by the dog on another person. This Bill extends the liability to a bite or attack on another animal, if the animal is under a person's control. It exempts those cases where liability is provided for under the *Dog Licensing and Live Stock and Poultry Protection Act*.

Bill 64

1985

An Act to amend the Dog Owners' Liability Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1.—(1) Subsection 2 (1) of the *Dog Owners' Liability Act*, being chapter 124 of the Revised Statutes of Ontario, 1980, is amended by adding at the end thereof “or on another animal if the other animal is under a person’s control”.

(2) Section 2 of the said Act is amended by adding thereto the following subsection:

(1a) Subsection (1) does not apply to damage resulting from a bite or attack on live stock or poultry as defined by section 8 of the *Dog Licensing and Live Stock and Poultry Protection Act*. Exception
R.S.O. 1980,
c. 123

2. This Act comes into force on the day it receives Royal Assent. Commence-
ment

3. The short title of this Act is the *Dog Owners' Liability Amendment Act, 1985*. Short title

Bill 65

An Act to amend the Labour Relations Act

The Hon. W. Wrye
Minister of Labour

1st Reading November 26th, 1985
2nd Reading
3rd Reading
Royal Assent



EXPLANATORY NOTE

The purpose of the Bill is to provide for the settlement of first collective agreements by arbitration where collective bargaining has been frustrated.



Bill 65

1985

An Act to amend the Labour Relations Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The *Labour Relations Act*, being chapter 228 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section:

40a.—(1) Where the parties are unable to effect a first collective agreement and the Minister has released a notice that it is not considered advisable to appoint a conciliation board or the Minister has released the report of a conciliation board, either party may apply to the Board to direct the settlement of a first collective agreement by arbitration.

First
agreement
arbitration

(2) The Board shall consider and make its decision on an application under subsection (1) within thirty days of receiving the application and it shall direct the settlement of a first collective agreement by arbitration where it appears to the Board that collective bargaining has been frustrated because of,

Duty of
Board

- (a) the refusal of the employer to recognize the bargaining authority of the trade union;
- (b) the uncompromising nature of any bargaining position adopted by the respondent without reasonable justification;
- (c) the failure of the respondent to make reasonable efforts to conclude a collective agreement; or
- (d) any other reason the Board considers relevant.

(3) Where a direction is given under subsection (2), the first collective agreement between the parties shall be settled by a board of arbitration unless within seven days of the giving of the direction the parties notify the Board that they have agreed that the Board arbitrate the settlement.

Choice of
arbitrator

Arbitration
by Board

(4) Where the parties give notice to the Board of their agreement that the Board arbitrate the settlement of the first collective agreement, the Board,

- (a) shall appoint a date for and commence a hearing within twenty-one days of the giving of the notice to the Board; and
- (b) shall determine all matters in dispute and release its decision within forty-five days of the commencement of the hearing.

Private
arbitration

(5) Where the parties do not agree that the Board arbitrate the settlement of the first collective agreement, each party, within ten days of the giving of the direction under subsection (2), shall inform the other party of the name of its appointee to the board of arbitration referred to in subsection (3) and the appointees so selected, within five days of the appointment of the second of them, shall appoint a third person who shall be the chairman.

Idem

(6) If a party fails to make an appointment as required by subsection (5) or if the appointees fail to agree upon a chairman with the time limited, the appointment shall be made by the Minister upon the request of either party.

Idem

(7) A board of arbitration appointed under this section shall determine its own procedure but shall give full opportunity to the parties to present their evidence and make their submissions and section 108 applies to the board of arbitration, its decision and proceedings as if it were the Board.

Idem

(8) The remuneration and expenses of the members of a board of arbitration appointed under this section shall be paid as follows:

1. A party shall pay the remuneration and expenses of the member appointed by or on behalf of the party.
2. Each party shall pay one-half of the remuneration and expenses of the chairman.

Idem

(9) A board of arbitration appointed under this section,

- (a) shall appoint a date for and commence a hearing within twenty-one days of the appointment of the chairman; and

- (b) shall determine all matters in dispute and release its decision within forty-five days of the commencement of the hearing.

(10) The Minister may appoint a mediator to confer with the parties and endeavour to effect a settlement prior to a hearing under subsection (4) or (9). Mediator

(11) The employees in the bargaining unit shall not strike and the employer shall not lock out such employees where a direction has been given under subsection (2) and, where such a direction is made during a strike by, or a lock-out of, employees in the bargaining unit, the employees shall forthwith terminate the strike or the employer shall forthwith terminate the lock-out and the employer shall forthwith reinstate the employees in the bargaining unit in the employment they had at the time the strike or lock-out commenced, Effect of direction on strike or lock-out

- (a) in accordance with any agreement between the employer and the trade union respecting reinstatement of the employees in the bargaining unit; or

- (b) where there is no agreement respecting reinstatement of the employees in the bargaining unit, on the basis of the length of service of each employee in relation to that of the other employees in the bargaining unit employed at the time the strike or lock-out commenced, except as may be directed by an order of the Board made for the purpose of allowing the employer to resume normal operations.

(12) The requirement to reinstate employees set out in subsection (11) applies notwithstanding that replacement employees may be performing the work of employees in the bargaining unit, but the said subsection does not apply so as to require reinstatement of an employee where, because of the permanent discontinuance of all or part of the business of the employer, the employer no longer has persons engaged in performing work of the same or a similar nature to work which the employee performed before the strike or lock-out. Non-application

(13) Where a direction has been given under subsection (2), the rates of wages and all other terms and conditions of employment and all rights, privileges and duties of the employer, the employees and the trade union in effect at the time notice was given under section 14 shall continue in effect, or, if altered before the giving of the direction, be restored and continued in effect until the first collective agreement is settled. Working conditions not to be altered

Non-application

(14) Subsection (13) does not apply so as to effect any alteration in rates of wages or in any other term or condition of employment agreed to by the employer and the trade union.

Matters to be accepted or considered

(15) In arbitrating the settlement of a first collective agreement under this section, matters agreed to by the parties, in writing, shall be accepted without amendment and account may be taken of,

- (a) whether the parties have made reasonable efforts to reach a collective agreement;
- (b) the terms and conditions of employment, if any, negotiated through collective bargaining for employees performing the same or similar functions in the same or similar circumstances as the employees in the bargaining unit; and
- (c) such other matters as the Board or board of arbitration considers relevant to a fair and reasonable settlement.

Effect of settlement

(16) A first collective agreement settled under this section is effective for a period of two years from the date on which it is settled and it may provide that any of its provisions are retroactive to such date as may be set out therein.

Extension of time

(17) The parties, by agreement, or the Minister may extend any time limit set out in this section, notwithstanding the expiration of such time.

Non-application

(18) This section does not apply to the construction industry.

Application

(19) This section applies to an employer and a trade union where the trade union has acquired or acquires bargaining rights for employees of the employer before or after the coming into force of this section and the bargaining rights have been acquired since the 1st day of January, 1984 and continue to exist at the time of an application under subsection (1).

Commencement

2. This Act comes into force on the day it receives Royal Assent.

Short title

3. The short title of this Act is the *Labour Relations Amendment Act, 1985*.

Bill 66

An Act to amend the Business Corporations Act, 1982

The Hon. M. Kwinter

Minister of Consumer and Commercial Relations

1st Reading November 26th, 1985

2nd Reading

3rd Reading

Royal Assent



EXPLANATORY NOTES

SECTION 1. The provision is recast to clarify that the Act applies only to “bodies corporate with share capital” and not to corporations incorporated under the *Corporations Act*.

SECTION 2. Subsection 14 (4) of the Act, as recast, is new. Subsection 14 (5) is a restatement of the current subsection 14 (4). Subsection 14 (1) is recast to take into account the new subsection 14 (4).

SECTIONS 3 and 15. Sections 25 and 167 of the Act are amended to provide that where shares are to be issued in one or more series, directors may amend the corporation’s articles or the articles themselves may fix the number of shares in and determine the designation, rights, privileges, restrictions and conditions attaching to the shares of a series.

SECTION 4. The provision is recast to clarify that the powers of the directors to declare, and the corporation to pay, a dividend on shares is subject to the articles and to any unanimous shareholder agreement.

SECTIONS 5, 6 and 8. The effect of the changes to sections 42, 45 and 56 of the Act is to permit securities dealers to police the ownership of their publicly traded shares.

SECTIONS 7 and 9. The effect of the changes to the definitions in subsection 53 (1) and the changes to section 85 of the Act is to permit clearing agencies to record transfers and pledges of securities, including securities issued by governments or their agencies as well as partnerships, by means of computer entries as an alternative to the issuance and use of security certificates.

SECTION 10. The amendment corrects an internal section reference.

SECTION 11. Section 125 of the Act deals with changes in the number of directors of a corporation. The proposed subsection (1a) provides that where a corporation has by special by-law increased or decreased the number of its directors as set out in the articles, in compliance with a predecessor of the Act, the special by-law shall be deemed to be effective and constitute an amendment to the articles of the corporation. The proposed subsection (2a) is intended to clarify subsection (2).

SECTION 12. Section 126 of the Act deals with meetings of directors. Subsection 126 (4) is recast to provide that where a corporation has fewer than three directors all must be present to constitute a quorum. Subsection 126 (6) is recast to allow business to be transacted by directors if one of two is Canadian.

SECTION 13. Subsection 138 (2) of the Act is amended in two places by changing “shares” to “voting securities” so that the wording of the subsection is more precise.

SECTION 14. The added section to Part XII of the Act provides for the effective date of an auditor’s resignation.

SECTION 16. The subsection being repealed provides that where a matter that constitutes an arrangement could be accomplished by articles of amendment, the latter procedure must be followed.

SECTION 17. Subsections are being added to section 184 of the Act, which deals with the rights of dissenting shareholders, to provide specifically that a negative proxy does not constitute a written objection for purposes of subsection 184 (6) and to require that the notice of the adoption of a resolution under subsection 184 (7) must state the resulting rights and steps to be taken by a dissenting shareholder.

SECTION 18. Subsection 239 (1) of the Act is recast to provide that the Director may, in exercising his discretion, cancel a certificate issued under the Act or a predecessor of the Act.

SECTION 19. The amendment removes the references to dissolution of a corporation under section 238, 239 or 240. A corporation can be dissolved under certain other sections. The substitution reflects this.

SECTION 20. The amendment corrects an internal section reference.

SECTION 21. The provision is recast to clarify that financial statements of corporations filed with the Director for purposes of making application for an exemption from the audit requirements in section 148 of the Act are confidential and not available to the public.

SECTION 22. The power to make regulations is expanded.

SECTION 23. The provision is recast to provide that the Director in endorsing corrected certificates may correct certificates or articles endorsed or issued under a predecessor of the Act and that a corporation may make application for a corrected certificate.

Bill 66

1985

**An Act to amend the
Business Corporations Act, 1982**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 2 of the *Business Corporations Act, 1982*, being chapter 4, is repealed and the following substituted therefor:

2.—(1) This Act, except where it is otherwise expressly provided, applies to every body corporate with share capital, Application

- (a) incorporated by or under a general or special Act of the Parliament of the former Province of Upper Canada;
- (b) incorporated by or under a general or special Act of the Parliament of the former Province of Canada that has its registered office and carries on business in Ontario; or
- (c) incorporated by or under a general or special Act of the Legislature,

but this Act does not apply to a corporation within the meaning of the *Loan and Trust Corporations Act* except as provided by that Act.

R.S.O. 1980,
c. 249

(2) Notwithstanding *The Railways Act*, being chapter 331 of the Revised Statutes of Ontario, 1950, and subject to subsection 167 (5), this Act applies to a body corporate with share capital that is a company as defined in that Act but that is not engaged in constructing or operating a railway, street railway or incline railway. Idem

(3) This Act does not apply to a body corporate with share capital that, Idem

R.S.O. 1980,
c. 95

- (a) is a company within the meaning of the *Corporations Act* and has objects in whole or in part of a social nature;

R.S.O. 1980,
c. 91

- (b) is a corporation to which the *Co-operative Corporations Act* applies;

- (c) is a corporation that is an insurer within the meaning of subsection 141 (1) of the *Corporations Act*; or

R.S.O. 1980,
c. 102

- (d) is a corporation to which the *Credit Unions and Caisses Populaires Act* applies.

2. Subsections 14 (1) and (4) of the said Act are repealed and the following substituted therefor:

Registered
office

- (1) A corporation shall at all times have a registered office in the municipality or geographic township within Ontario specified in its articles or in a special resolution made under subsection (4).

.

Change of
registered
office

- (4) A corporation may by special resolution change the municipality or geographic township in which its registered office is located to another place in Ontario and, if it does so, shall file a certified copy of the resolution with the Director within ten days after passing the resolution.

Validity

- (5) Failure to file as set out in subsection (3) or (4) does not affect the validity of the resolution.

3. Subsections 25 (1), (4) and (5) of the said Act are repealed and the following substituted therefor:

Special
shares
in series

- (1) The articles, subject to the limitations set out in them,
- (a) may authorize the issue of any class of shares in one or more series and may fix the number of shares in, and determine the designation, rights, privileges, restrictions and conditions attaching to the shares of, each series; and
 - (b) may, where the articles authorize the issue of any class of shares in one or more series, authorize the directors to fix the number of shares in, and to determine the designation, rights, privileges, restric-

tions and conditions attaching to the shares of each series.

.

(4) Where, in respect of a series of shares, the directors exercise the authority conferred on them, before the issue of shares of such series, the directors shall send to the Director articles of amendment in the prescribed form designating such series.

Articles
designating
special shares

(5) On receipt of articles of amendment designating a series of shares under subsection (4), the Director shall endorse thereon, in accordance with section 272, a certificate which shall constitute the certificate of amendment.

Certificate
re special
shares

4. Subsection 38 (1) of the said Act is repealed and the following substituted therefor:

(1) Subject to its articles and any unanimous shareholder agreement, the directors may declare and a corporation may pay a dividend by issuing fully paid shares of the corporation or options or rights to acquire fully paid shares of the corporation and, subject to subsection (3), a corporation may pay a dividend in money or property.

Declaration
of dividends

5.—(1) Clause 42 (2) (c) of the said Act is amended by inserting after “any” in the second line “prescribed class of” and by striking out “as a dealer” in the fifth and sixth lines.

(2) Subsection 42 (3) of the said Act is repealed and the following substituted therefor:

(3) Nothing in clause (2) (c) or (d) authorizes a corporation to impose restrictions on the issue, transfer or ownership of shares of any class or series of which any shares are outstanding unless,

Application
of
subs. (2)
(c, d)

- (a) in the case of restrictions in respect of a class, the shares of the class; or
- (b) in the case of restrictions in respect of a series, the shares of the series,

are already subject to restrictions for the purpose described in clause (2) (c) or (d).

(3) Clause 42 (4) (b) of the said Act is repealed and the following substituted therefor:

- (b) prohibit the ownership of its shares,

6. Subsection 45 (1) of the said Act is repealed and the following substituted therefor:

Restricted
shares held
in contraven-
tion—sale by
corporation

(1) A corporation that has restrictions on the issue, transfer or ownership of its shares of any class or series in order to assist the corporation or any of its affiliates or associates to qualify,

R.S.O. 1980,
c. 466

- (a) under the *Securities Act* or similar legislation of a province or territory to obtain, hold or renew registration; or

- (b) for membership in a stock exchange in Ontario recognized as such by the Commission,

by reason of limiting to a specified level the ownership of its shares by any prescribed class of person or,

- (c) under any prescribed Act of Canada or a province or ordinance of a territory to receive licences, permits, grants, payments or other benefits by reason of attaining or maintaining a specified level of Canadian ownership or control,

may, for a purpose set out in clause (a), (b) or (c) or, in the case of a corporation under clause (c), for the purpose of attaining or maintaining a level of Canadian ownership or control specified in its articles, under such conditions and after giving such notice as may be prescribed, sell, as if it were the owner thereof, any of the restricted shares that are owned, or that the directors determine in such manner as may be prescribed may be owned, contrary to the restrictions.

7.—(1) Clauses 53 (1) (d), (f), (g), (n) and (u) of the said Act are repealed and the following substituted therefor:

- (d) “*bona fide purchaser*” means a purchaser for value, in good faith and without notice of any adverse claim,

- (i) who takes delivery of a security certificate in bearer form or order form or of a security certificate in registered form issued to him or endorsed to him or endorsed in blank,

- (ii) in whose name an uncertificated security is registered or recorded in records maintained by or on behalf of the issuer as a result of the issue or transfer of the security to him, or
 - (iii) who is a transferee or pledgee as provided in section 85;
-
- (f) “clearing agency” means a person designated as a recognized clearing agency by the Commission;
 - (g) “custodian” means a person acting as a custodian for a clearing agency;
-
- (n) “issuer” means a body corporate,
 - (i) that is required by this Act to maintain a securities register,
 - (ii) that directly or indirectly creates fractional interests in its rights or property and issues security certificates or uncertificated securities as evidence of the fractional interests,
 - (iii) that places or authorizes the placing of its name on a security certificate, otherwise than as an authenticating trustee, registrar or transfer agent, or that otherwise authorizes the issue of a security certificate or an uncertificated security evidencing a share, participation or other interest in its property or in an enterprise or evidencing its duty to perform an obligation, or
 - (iv) that becomes responsible for or in place of any other person described as an issuer in this Part;
-
- (u) “security” means a share, participation or other interest in property, rights or an enterprise of an issuer, or an obligation of an issuer, or any right to acquire such a share, participation, interest or obligation, of a type commonly dealt in upon securities exchanges or markets or commonly recognized as a

medium for investment in any area in which it is issued or dealt in;

- (ua) “security certificate” means an instrument in bearer, order or registered form, issued by an issuer evidencing a security.

(2) Subsection 53 (1) of the said Act is amended by adding thereto the following clause:

- (xa) “uncertificated security” means a security, not evidenced by a security certificate, the issue and any transfer of which is registered or recorded in records maintained for that purpose by or on behalf of the issuer.

8. Subsection 56 (8) of the said Act is repealed and the following substituted therefor:

Notice of
restrictions

(8) Where the articles of a corporation restrict the issue, transfer or ownership of shares of any class or series for a purpose set out in clause 42 (2) (c) or (d), the restriction or a reference to it shall be noted conspicuously on every share certificate of the corporation evidencing a share that is subject to the restriction where the certificate is issued after the day on which the share becomes subject to the restriction under this Act and any reference to the restriction shall include a statement that the corporation will furnish to a shareholder, on demand and without charge, a full copy of the text of the restriction.

9.—(1) Subsection 85 (1) of the said Act is repealed and the following substituted therefor:

Transfer
through
clearing
agency

(1) If a security shown in the records of a clearing agency is evidenced by,

- (a) a security certificate in the custody of the clearing agency or a custodian or of a nominee of either, subject to the instructions of the clearing agency, and is in bearer form or endorsed in blank by an appropriate person or registered in the name of the clearing agency or a custodian or of a nominee of either; or
- (b) an uncertificated security registered or recorded in records maintained by or on behalf of the issuer in the name of the clearing agency or a custodian or of a nominee of either, subject to the instructions of the clearing agency,

then, in addition to other methods, a transfer or pledge of the security or any interest therein may be effected by the making of an appropriate entry in the records of the clearing agency.

(2) Subsection 85 (5) of the said Act is repealed and the following substituted therefor:

(5) A person depositing a security certificate or an uncertificated security with a clearing agency, or a transferee or pledgee of a security under this section, is a holder of the security and shall be deemed to have possession of the security so deposited, transferred or pledged, as the case may be, for all purposes, including, if a pledge or the creation of a security interest is intended, for the purposes of the *Personal Property Security Act*. Holder
R.S.O. 1980,
c. 375

(3) Subsection 85 (8) of the said Act is repealed and the following substituted therefor:

(8) In this section,

Definitions

“issuer” includes a person, other than an individual, and a government or agency thereof,

- (a) that is required by this Act to maintain a securities register,
- (b) that directly or indirectly creates fractional interests in its rights or property and issues security certificates or uncertificated securities as evidence of the fractional interests,
- (c) that places or authorizes the placing of its name on a security certificate, otherwise than as an authenticating trustee, registrar or transfer agent, or that otherwise authorizes the issue of a security certificate or an uncertificated security evidencing a share, participation or other interest in its property or in an enterprise or evidencing its duty to perform an obligation, or
- (d) that becomes responsible for or in place of any other person described as an issuer in this section; and

“security”, “security certificate” and “uncertificated security”, in addition to the meaning each has for the purposes of Part VI, are extended to include a security, security certificate or uncertificated security, as the case may be, of an issuer within the meaning of this section.

10. Subsection 96 (4) of the said Act is amended by striking out “subsection 111 (1)” in the fifth line and inserting in lieu thereof “section 111”.

11. Section 125 of the said Act is amended by adding thereto the following subsections:

Articles
amendment

(1a) Where a corporation has increased or decreased the number of directors by special by-law under a predecessor of this Act, the special by-law shall be deemed to constitute an amendment to its articles.

.

Idem

(2a) Where no resolution has been filed under subsection (2), the number of directors of the corporation shall be the number of directors named in its articles.

12. Subsections 126 (4) and (6) of the said Act are repealed and the following substituted therefor:

Idem

(4) Where a corporation has fewer than three directors, all directors must be present at any meeting of directors to constitute a quorum.

.

Transacting
business

(6) Directors, other than directors of a non-resident corporation, shall not transact business at a meeting of directors unless a majority of directors present are resident Canadians or, where a corporation has fewer than three directors, one of the directors present is a resident Canadian.

13. Clauses 138 (2) (c) and (d) of the said Act are repealed and the following substituted therefor:

(c) a person is deemed to own beneficially, voting securities beneficially owned by a body corporate controlled by him directly or indirectly; and

(d) a body corporate is deemed to own beneficially, voting securities beneficially owned by its affiliates.

14. The said Act is amended by adding thereto the following section:

Resignation
of auditor

149a. A resignation of an auditor becomes effective at the time a written resignation is sent to the corporation or at the time specified in the resignation, whichever is later.

15.—(1) Section 167 of the said Act is amended by adding thereto the following subsection:

(1a) Where the directors are authorized by the articles to divide any class of unissued shares into series and determine the designation, rights, privileges, restrictions and conditions thereof, they may authorize the amendment of the articles to so provide. Idem

(2) Subsection 167 (4) of the said Act is amended by inserting after “subsection” in the second line “(1a) or”.

16. Subsection 181 (7) of the said Act is repealed.

17. Section 184 of the said Act is amended by adding thereto the following subsections:

(6a) The execution or exercise of a proxy does not constitute a written objection for purposes of subsection (6). Idem

.

(7a) A notice sent under subsection (7) shall set out the rights of the dissenting shareholder and the procedures to be followed to exercise those rights. Idem

18. Subsection 239 (1) of the said Act, exclusive of the clauses, is repealed and the following substituted therefor:

(1) Where sufficient cause is shown to the Director, notwithstanding the imposition of any other penalty in respect thereof and in addition to any rights he may have under this or any other Act, he may, after he has given the corporation an opportunity to be heard, by order, upon such terms and conditions as he thinks fit, cancel a certificate of incorporation or any other certificate issued or endorsed under this Act or a predecessor of this Act, and, Cancellation of certificate, etc., by Director

.

19. Subsection 241 (1) of the said Act is amended by striking out “under section 238, 239 or 240” in the second line and inserting in lieu thereof “under this Act”.

20. Clause 257 (1) (c) of the said Act is amended by striking out “subsection 111 (1)” in the fourth line and inserting in lieu thereof “section 111”.

21. Section 269 of the said Act is amended by adding thereto the following subsection:

Privileged
documents

(3) Subsections (1) and (2) do not apply in respect of documents and financial statements required, by this Act or the regulations, to be filed with the Director with an application for exemption from the requirements of Part XII of this Act.

22. Paragraphs 6 and 25 of section 271 of the said Act are repealed and the following substituted therefor:

6. prescribing the form and content of information circulars and proxies required by Part VIII and the discretionary authority that may be conferred in proxies;
- 17a. prescribing that, for the purposes of Part XII of this Act, the standards, as they exist from time to time, of a prescribed accounting body shall be followed;
25. prescribing, with respect to a corporation that has imposed restrictions on the issue, transfer or ownership of its shares for a purpose under subsection 42 (2),
 - i. the disclosure required of the restrictions in documents issued or published by the corporation,
 - ii. the duties and powers of the directors to refuse to issue or register transfers of shares in accordance with the articles of the corporation,
 - iii. the limitations on voting rights of any shares held contrary to the articles of the corporation, and
 - iv. the powers of the directors to require disclosure of beneficial ownership of shares of the corporation and the rights of the corporation and its directors, employees or agents to rely on the disclosure and the effects of the reliance;
- 25a. prescribing persons or classes of persons for the purpose of clause 42 (2) (c) and prescribing the

manner of computing the ownership of shares of a corporation by persons for such purpose;

.

27. prescribing classes of persons for the purposes of subparagraph ii of paragraph 37 of subsection 1 (1);
28. prescribing any matter referred to in this Act as prescribed by the regulations.

23. Subsection 273 (1) of the said Act is repealed and the following substituted therefor:

(1) Where a certificate endorsed or issued under this Act or a predecessor of this Act contains an error or where a certificate has been endorsed or issued on articles or any other documents that contain an error,

Where error
in respect of
certificate

- (a) the corporation, its directors or shareholders may apply to the Director for a corrected certificate and shall surrender the certificate and related articles or documents; or
- (b) the corporation shall upon the request of the Director surrender the certificate and related articles or documents,

and, after giving the corporation an opportunity to be heard, where the Director is of the opinion that it is appropriate to so do and is satisfied that such steps have been taken by the corporation as the Director required, the Director shall endorse a corrected certificate.

24.—(1) This Act, except sections 18 and 23, comes into force on a day to be named by proclamation of the Lieutenant Governor.

Commence-
ment

(2) Sections 18 and 23 shall be deemed to have come into force on the 29th day of July, 1983.

Idem

25. The short title of this Act is the *Business Corporations Amendment Act, 1985*.

Short title

Bill 67

An Act to establish Midwifery as a Self-governing Health Profession

Mr. Cooke



<i>1st Reading</i>	November 28th, 1985
<i>2nd Reading</i>	
<i>3rd Reading</i>	
<i>Royal Assent</i>	

EXPLANATORY NOTE

The Bill is intended to establish midwifery as an independent, self-governing health profession along the lines of medicine and nursing.



Bill 67

1985

**An Act to establish
Midwifery as a Self-governing Health Profession**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The *Health Disciplines Act*, being chapter 196 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following Part:

PART III-A

MIDWIFERY

67a.—(1) In this Part,

Interpretation

- (a) “by-laws” means the by-laws made under this Part;
- (b) “College” means the College of Midwives of Ontario;
- (c) “Council” means the Council of the College;
- (d) “licence” means a licence for the practice of midwifery issued under this Part;
- (e) “member” means a member of the College;
- (f) “practice of midwifery” means the supervision, care and counselling of women before, during and after pregnancy and labour, and includes,
 - (i) conducting normal deliveries independently,
 - (ii) caring for the newborn,
 - (iii) taking preventive measures,

- (iv) detecting abnormal conditions in mothers and the newborn,
 - (v) obtaining medical assistance,
 - (vi) taking emergency measures in the absence of medical assistance, and
 - (vii) providing counselling and education to the community concerning health, preparation for birth and parenthood, family planning and child care;
- (g) “prescribed” means prescribed by the regulations or by-laws made under this Part;
- (h) “Registrar” means the Registrar of the College;
- (i) “regulations” means the regulations made under this Part.

Health
discipline

(2) The practice of midwifery is a health discipline to which this Part applies.

College of
Midwives
established

67b.—(1) The College of Midwives of Ontario is established as a body corporate without share capital with power to acquire, hold and dispose of real and personal property for the purposes of this Part.

Objects

(2) The objects of the College are,

- (a) to regulate the practice of midwifery and to govern its members in accordance with this Act, the regulations and the by-laws;
- (b) to establish, maintain and develop standards of knowledge and skill among its members;
- (c) to establish, maintain and develop standards of qualification and practice for the practice of midwifery;
- (d) to establish, maintain and develop standards of professional ethics among its members;
- (e) to administer this Part and perform such other duties and exercise such other powers as are imposed or conferred on the College by or under any Act;

- (f) such other objects relating to human health care as the Council considers desirable,

in order that the public interest may be served and protected.

67c.—(1) Every person licensed by the College is a member of the College subject to any term, condition or limitation to which the licence is subject. Membership in the College

(2) A member may resign his or her membership by filing a written resignation with the Registrar and the member's licence is thereupon cancelled, subject to the continuing jurisdiction of the College in respect of any disciplinary action arising out of the member's professional conduct while a member. Resignation of membership

(3) The Registrar may cancel a licence for non-payment of any prescribed fee after giving the member at least two months notice of the default and intention to cancel, subject to the continuing jurisdiction of the College in respect of any disciplinary action arising out of the member's professional conduct as a member. Cancellation for default of fees

67d.—(1) The Council of the College is established and shall be the governing body and board of directors of the College and shall manage and administer its affairs. Council of the College

(2) The Council shall be composed of, Composition of Council

- (a) not fewer than eighteen and not more than twenty-five persons who are members and are elected by the members in the manner provided by the regulations; and
- (b) not fewer than six and not more than ten persons who are not members of a Council under this Act or registered or licensed under this Act or any other Act governing a health practice, and who are appointed by the Lieutenant Governor in Council.

(3) The appointment of every person appointed under subsection (2) expires at the first regular meeting of the Council following the election of members to Council held next after the effective date of the person's appointment, and a person whose appointment expires is eligible for reappointment. Expiration of appointment

- (4) Every member who is, Qualifications to vote: members
- (a) resident in Ontario;

(b) licensed to practise midwifery; and

(c) not in default of payment of the prescribed annual fee,

is qualified to vote at an election of members of the Council.

President
and Vice-
President

(5) The Council shall elect annually a President and Vice-President from among its members.

Registrar
and
officers

(6) The Council shall appoint during pleasure a Registrar and such other officers and servants as may from time to time be necessary or desirable in the opinion of the Council to perform the work of the College.

Quorum

(7) A majority of the members of the Council constitutes a quorum.

Powers of
Minister

67e. In addition to the powers and duties conferred under Part I, the Minister may,

(a) review the activities of the Council;

(b) request the Council to undertake activities that, in the opinion of the Minister, are necessary and advisable to carry out the intent of this Act;

(c) advise the Council with respect to the implementation of this Part and the regulations and with respect to the methods used or proposed to be used by the Council to implement policies and to enforce its regulations and procedures.

Regulations

67f. Subject to the approval of the Lieutenant Governor in Council and with prior review by the Minister, the Council may make regulations,

(a) fixing the number of members to be elected to the Council and establishing electoral districts for elections;

(b) respecting and governing the qualifications, nomination, election and term of office of the members to be elected to the Council, and controverted elections;

(c) prescribing the conditions disqualifying elected members from sitting on the Council and governing the filling of vacancies on the Council;

- (d) respecting any matter ancillary to the provisions of this Part with regard to the issuing, suspension and revocation of licences;
- (e) prescribing classes of licences and governing the requirements and qualifications for the issuing of licences or any class thereof and prescribing the terms and conditions thereof;
- (f) providing for the maintenance and inspection of registers of persons permitted to practise and for the issuance of certificates of standing by the Registrar;
- (g) governing standards of practice for the profession;
- (h) requiring every member to file with the Registrar annually a plan for consultation with physicians licensed under Part III and for emergency care of the member's patients by a physician or physicians, and providing that a member's licence may be suspended for failure to file such a plan annually;
- (i) governing the designation of life members of the College and prescribing their rights and privileges;
- (j) prohibiting the practice of midwifery where there is a conflict of interest and defining the activities that constitute a conflict of interest for the purpose;
- (k) defining professional misconduct for the purposes of this Part;
- (l) providing for a program of continuing education of members to maintain their standard of competence and requiring members to participate in such continuing education;
- (m) regulating, controlling and prohibiting the use of terms, titles or designations by members or groups or associations of members in respect of their practices;
- (n) respecting the reporting and publication of decisions in disciplinary matters;
- (o) requiring and providing for the inspection and examination of books, accounts, reports and records of members in connection with their practice;

- (p) providing for the compilation of statistical information on the supply, distribution and professional activities of members and requiring members to provide the information necessary to compile such statistics;
- (q) respecting the duties and authority of the Registrar;
- (r) requiring the payment of fees by members and fees for licensing, examinations and continuing education, including penalties for late payment and fees for anything the Registrar is required or authorized to do, and prescribing the amounts thereof;
- (s) prescribing forms and providing for their use;
- (t) providing for the exemption of any member from any provision of the regulations under such special circumstances in the public interest as the Council considers advisable.

By-laws

67g.—(1) The Council may pass by-laws relating to the administrative and domestic affairs of the College not inconsistent with this Act and the regulations and without limiting the generality of the foregoing,

- (a) prescribing the seal of the College;
- (b) providing for the execution of documents by the College;
- (c) respecting banking and finance;
- (d) fixing the financial year of the College and providing for the audit of the accounts and transactions of the College;
- (e) providing procedures for the election of President and Vice-President of the College, the filling of a vacancy in those offices, and prescribing the duties of the President and Vice-President;
- (f) respecting the calling, holding and conducting of meetings of the Council and the duties of members of Council;
- (g) respecting the calling, holding and conducting of meetings of the membership of the College;

- (h) prescribing the remuneration of the members of the Council and committees other than persons appointed by the Lieutenant Governor in Council and providing for the payment of necessary expenses of the Council and committees in the conduct of their business;
- (i) providing for the appointment, composition, powers and duties of such additional or special committees as may be required;
- (j) delegating to the Executive Committee such powers and duties of the Council as are set out in the by-law, other than the power to make, amend or revoke regulations and by-laws;
- (k) providing for a code of ethics;
- (l) prescribing forms and providing for their use;
- (m) providing procedures for the making, amending and revoking of the by-laws;
- (n) respecting management of the property of the College;
- (o) respecting the application of the funds of the College and the investment and reinvestment of any of its funds not immediately required, and for the safe-keeping of its securities;
- (p) providing for the entering into arrangements by the College for its members respecting indemnity for professional liability and respecting the payment and remittance of premiums in connection therewith and prescribing levies to be paid by members and exempting members or any class thereof from all or part of any such levy;
- (q) providing for the establishment, maintenance and administration of a benevolent fund for needy practitioners in Ontario and the dependants of deceased members;
- (r) respecting membership of the College in a national organization with similar functions, the payment of an annual assessment and provision for representatives at meetings;

- (s) respecting all of the things that are considered necessary for the attainment of the objects of the College and the efficient conduct of its affairs.

Idem

(2) A copy of the by-laws made under subsection (1) and amendments thereto,

- (a) shall be forwarded to the Minister;
- (b) shall be forwarded to each member; and
- (c) shall be available for public inspection in the office of the College.

Signing
by-law and
resolutions

(3) Any by-law or resolution signed by all members of the Council is as valid and effective as if passed at a meeting of the Council duly called, constituted and held for the purpose.

Licence to
practise

67h.—(1) No person shall engage in the practice of midwifery, except in the provision of counselling and education referred to in subclause 67a (1) (f) (vii), or hold himself or herself out as engaging in the practice of midwifery, unless the person is licensed under this Part or under Part III.

Proof of
practice

(2) For the purposes of this section, proof of the performance of one act in the practice of midwifery on one occasion is sufficient to establish engaging in the practice of midwifery.

Conflict
with other
health
discipline

(3) A member or person authorized by the regulations may engage in the practice of midwifery notwithstanding that any part of that practice is included in the practice of another health discipline.

Establish-
ment of
committees

67i.—(1) The Council shall establish and appoint as hereinafter provided the following committees,

- (a) Executive Committee;
- (b) Registration Committee; and
- (c) Discipline Committee,

and may establish such other committees as the Council from time to time considers necessary.

Vacancies

(2) Where one or more vacancies occur in the membership of the Council or any committee, the members remaining in office constitute the Council or committee so long as their number is not fewer than the prescribed quorum.

67j.—(1) The Executive Committee shall be composed of, Executive Committee

- (a) the President, who shall be chairman of the Committee;
- (b) the Vice-President; and
- (c) four members of the Council, two of whom shall be persons appointed to the Council by the Lieutenant Governor in Council.

(2) A majority of the members of the Executive Committee constitutes a quorum. Quorum

(3) The Executive Committee shall perform such functions of the Council as are delegated to it by the Council, the by-laws or this Part and, subject to ratification by the Council at its next ensuing meeting, may take action upon any other matter that requires immediate attention between meetings of the Council, other than to make, amend or revoke a regulation or by-law. Duties

67k.—(1) The Registration Committee shall be composed of, Registration Committee

- (a) four members of the Council, two of whom shall be persons appointed to the Council by the Lieutenant Governor in Council; and

(b) the President and Vice-President, *ex officio*.

(2) The Council shall name one member of the Registration Committee to be chairman. Chairman

(3) A majority of the members of the Registration Committee constitutes a quorum. Quorum

67l.—(1) The Registrar shall issue a licence to any applicant therefor who is qualified under this Part and the regulations and has passed such examinations as the Council may set or approve, and the Registrar shall refer to the Registration Committee every application for a licence that he or she proposes to refuse or to which he or she considers terms, conditions or limitations should be attached. Issuance of licences

(2) The Registration Committee,

- (a) shall determine the eligibility of applicants for licences and may require an applicant to take and Powers and duties of Registration Committee

pass such additional examinations as the Council may set or approve and pay such fees therefor as the Registration Committee fixes or to take such additional training as the Registration Committee specifies; and

- (b) may exempt an applicant from any licensing requirement.

Idem

(3) The Registration Committee may direct the Registrar to issue or refuse to issue licences or to issue licences subject to such terms, conditions and limitations as the Committee specifies.

Review of
qualifica-
tions

(4) The Registration Committee may review the qualifications of any member and may impose a further term, condition or limitation on the member's licence pending the demonstration of such standard of competence through the completion of such experience, courses of study or continuing education as the Committee specifies.

Registers
of
licences

(5) The Registrar shall maintain one or more registers in which is entered every person who is licensed to practise midwifery, identifying the terms, conditions and limitations attached to the licence, and shall note on the register every revocation, suspension and cancellation of a licence and such other information as the Registration Committee or Discipline Committee directs.

Discipline
Committee

67m.—(1) The Discipline Committee shall be composed of ten members of the Council, four of whom shall be persons appointed to the Council by the Lieutenant Governor in Council.

Chairman

(2) The Council shall appoint one of the members of the Discipline Committee to be chairman.

Composition
of panels

(3) The chairman of the Discipline Committee may assign a panel of five members of the Committee to hold a hearing of whom one shall be a person appointed to the Council by the Lieutenant Governor in Council.

Quorum
and votes

(4) Three members of a panel assigned under subsection (3), one of whom shall be a person appointed to the Council by the Lieutenant Governor in Council, constitute a quorum for a hearing and all disciplinary decisions require the vote of a majority of members of the Discipline Committee presiding at the hearing, but in the event of a tie vote the chairman shall have a second or casting vote.

(5) Where a panel of the Discipline Committee commences a hearing and the member of the panel who is appointed to the Council by the Lieutenant Governor in Council becomes unable to continue to act, the remaining members may complete the hearing notwithstanding the member's absence.

Disability
of lay
member

67n.—(1) The Discipline Committee shall,

Duties of
Discipline
Committee

- (a) consider and investigate complaints made by members of the public or members of the College regarding the conduct or actions of any member of the College, and take such action as it considers appropriate, including proceeding under clause (b) as if the complaint were an allegation of professional misconduct or incompetence;
- (b) hear and determine allegations of professional misconduct or incompetence against members,
 - (i) when so directed by the Council or Executive Committee, and
 - (ii) when the Discipline Committee considers it appropriate to deal with a complaint under this clause as if the complaint were an allegation of professional misconduct or incompetence;
- (c) hear and determine matters referred to it under section 67p;
- (d) hold hearings under section 67o; and
- (e) perform such other duties as are assigned to it by the Council.

(2) No action shall be taken by the Committee under clause (1) (a) unless, Idem

- (a) a written complaint has been filed with the Registrar and the member whose conduct or actions are being investigated has been notified of the complaint and given at least two weeks in which to submit in writing to the Committee any explanations or representations he or she may wish to make concerning the matter; and
- (b) the Committee has examined or has made every reasonable effort to examine all records and other documents relating to the complaint.

Idem

(3) In the case of hearings into allegations of professional misconduct or incompetence, the Discipline Committee shall,

- (a) consider the allegations, hear the evidence and ascertain the facts of the case;
- (b) determine whether upon the evidence and the facts so ascertained the allegations have been proved;
- (c) determine whether in respect of the allegations so proved the member is guilty of professional misconduct or incompetence;
- (d) determine the penalty to be imposed as hereinafter provided in cases in which it finds the member guilty of professional misconduct or of incompetence.

Professional misconduct

(4) A member may be found guilty of professional misconduct by the Committee if,

- (a) he or she has been found guilty of an offence relevant to suitability to practise, upon proof of the conviction; or
- (b) he or she has been guilty in the opinion of the Discipline Committee of professional misconduct as defined in the regulations.

Incompetence

(5) The Discipline Committee may find a member to be incompetent if in its opinion the member has displayed in the professional care of a patient a lack of knowledge, skill or judgment or disregard for the welfare of the patient of a nature or to an extent that demonstrates the member is unfit to continue in practice.

Powers of Discipline Committee

(6) Where the Discipline Committee finds a member guilty of professional misconduct or incompetence it may by order,

- (a) revoke the licence of the member;
- (b) suspend the licence of the member for a stated period;
- (c) impose such restrictions on the licence of the member for such a period and subject to such conditions as the Committee designates;

- (d) reprimand the member and, if deemed warranted, direct that the fact of such reprimand be recorded on the register;
- (e) impose such fine as the Committee considers appropriate to a maximum of \$5,000 to be paid by the member to the Treasurer of Ontario for payment into the Consolidated Revenue Fund;
- (f) direct that the imposition of a penalty be suspended or postponed for such period and upon such terms as the Committee designates,

or any combination thereof.

(7) Where the Discipline Committee is of the opinion that the commencement of the proceedings was unwarranted, the Committee may order that the College reimburse the member for his or her costs or such portion thereof as the Discipline Committee fixes. Costs

(8) Where the Discipline Committee revokes, suspends or restricts a licence on the grounds of incompetence, the decision takes effect immediately notwithstanding that an appeal is taken from the decision. Stay on
appeal for
incompetence

(9) Where the Discipline Committee revokes, suspends or restricts the licence of a member on grounds other than for incompetence, the order shall not take effect until the time for appeal from the order has expired without an appeal being taken or, if taken, the appeal has been disposed of or abandoned. Stay on
appeal for
professional
misconduct

(10) Where the Discipline Committee finds a member guilty of professional misconduct or incompetence, a copy of the decision shall be served upon the person complaining in respect of the conduct or action of the member. Service of
decision of
Discipline
Committee

(11) Where a proceeding is commenced before the Discipline Committee and the term of office on the Council or on the Committee of a member sitting for the hearing expires or is terminated before the proceeding is disposed of but after evidence has been heard, the member shall be deemed to remain a member of the Discipline Committee for the purpose of completing the disposition of the proceeding in the same manner as if the term of office had not expired or been terminated. Continuation
on expiry of
Committee
membership

67o.—(1) In this section,

Interpretation

- (a) “board of inquiry” means a board of inquiry appointed by the Executive Committee under subsection (2);
- (b) “incapacitated member” means a member suffering from a physical or mental condition or disorder of a nature and extent making it desirable in the interests of the public or the member that he or she no longer be permitted to practise or that the member’s practice be restricted.

Reference
to board of
inquiry

(2) Where the Registrar receives information leading him or her to believe that a member may be an incapacitated member, the Registrar shall make such inquiry as he or she considers appropriate and report to the Executive Committee who may, upon notice to the member, appoint a board of inquiry composed of at least two members of the College and one member of the Council appointed thereto by the Lieutenant Governor in Council who shall inquire into the matter.

Examination

(3) The board of inquiry shall make such inquiries as it considers appropriate and may require the member to submit to physical or mental examination by such qualified person as the board designates and if the member refuses or fails to submit to such examination, the board may order that the member’s licence be suspended until the member complies.

Hearing by
Discipline
Committee

(4) The board of inquiry shall report its findings to the Executive Committee and deliver a copy thereof and a copy of any medical report obtained under subsection (3) to the member about whom the report is made and if, in the opinion of the Executive Committee, the evidence so warrants, the Executive Committee shall refer the matter to the Discipline Committee to hold a hearing and may suspend the member’s licence until the determination of the question of the member’s capacity becomes final.

Parties

(5) The College, the person whose capacity is being investigated and any other person specified by the Discipline Committee are parties to a proceeding under this section.

Medical
evidence

(6) A legally qualified medical practitioner is not compellable to produce at the hearing his or her case histories, notes or any other records constituting medical evidence but, when required to give evidence, shall prepare a report containing the medical facts, findings, conclusions and treatment, to be signed by the practitioner and served upon the other parties to the proceeding,

- (a) where the evidence is required by the College, at least five days before the hearing commences; and
- (b) where the evidence is required by the person about whom the report is made, at least five days before its introduction as evidence,

and the report is receivable in evidence without proof of its making or of the signature of the legally qualified medical practitioner making the report but a party who is not tendering the report as evidence has the right to summon and cross-examine the medical practitioner on the contents of the report.

(7) The Discipline Committee shall, after the hearing,

Powers of
Discipline
Committee

- (a) make a finding as to whether or not the member is an incapacitated member; and
- (b) where the member is found to be an incapacitated member, by order,
 - (i) revoke the member's licence,
 - (ii) suspend the member's licence for such period as the Committee considers appropriate, or
 - (iii) attach such terms and conditions to the licence as the Committee considers appropriate.

(8) The provisions of Part I and this Part applying to proceedings of the Health Disciplines Board on hearings and review in respect of applications for registration and appeals therefrom apply with necessary modifications to proceedings of the Discipline Committee under this section, except that the decision takes effect immediately notwithstanding that an appeal is taken from the decision.

Procedures

67p.—(1) A person whose licence has been revoked or suspended for cause under this Part, or under a predecessor of this Part, may apply in writing to the Registrar for the issuance of a licence or removal of the suspension, but such application shall not be made sooner than one year after the revocation or, where the suspension is for a period of more than one year, one year after the suspension.

Restoration
of licence

(2) The Registrar shall refer the application to the Discipline Committee which shall hold a hearing respecting, and decide upon, the application and the Discipline Committee

Reference to
Discipline
Committee

shall report its decision and reasons to the Council and to the former member.

Procedures

(3) The provisions of Part I and this Part applying to proceedings of the Health Disciplines Board on hearings and review in respect of applications for registration, except subsection 11 (9), apply with necessary modifications to proceedings of the Discipline Committee under this section.

Direction
by Council
to issue
licence

(4) Notwithstanding subsections (1), (2) and (3), the Council or the Executive Committee may direct at any time that a licence be issued to a person whose licence has previously been revoked for cause or a suspension for cause be removed, subject to such terms, conditions or limitations as the Council or Executive Committee, as the case may be, considers appropriate.

Investigation
of members

67q.—(1) Where the Registrar believes on reasonable and probable grounds that a member has committed an act of professional misconduct or incompetence, the Registrar may, with the approval of the Executive Committee, by order appoint one or more persons to make an investigation to ascertain whether such act has occurred, and the person appointed shall report the result of the investigation to the Registrar.

Powers of
investigator

(2) For purposes relevant to the subject-matter of an investigation under this section, the person appointed to make the investigation may inquire into and examine the practice of the member in respect of whom the investigation is being made and may, upon production of his or her appointment, enter at any reasonable time the business premises of the member and examine books, records, documents and things relevant to the subject-matter of the investigation and for the purposes of the inquiry, the person making the investigation has the powers of a commission under Part II of the *Public Inquiries Act*, which Part applies to such inquiry as if it were an inquiry under that Act.

R.S.O. 1980,
c. 411

Obstruction
of
investigator

(3) No person shall obstruct a person appointed to make an investigation under this section or withhold from him or her or conceal or destroy any books, records, documents or things relevant to the subject-matter of the investigation.

Search
warrant

(4) Where a justice of the peace is satisfied, upon an *ex parte* application by the person making an investigation under this section, that the investigation has been ordered and that such person has been appointed to make it and that there is reasonable ground for believing there are in any building, dwelling, receptacle or place any books, records, documents

or things relating to the person whose affairs are being investigated and to the subject-matter of the investigation, the justice of the peace may, whether or not an inspection has been made or attempted under subsection (2), issue an order authorizing the person making the investigation, together with such police officer or officers as the person calls upon to assist, to enter and search, if necessary by force, such building, dwelling, receptacle or place for such books, records, documents or things and to examine them, but every such entry and search shall be made between sunrise and sunset unless the justice of the peace, by the order, authorizes the person making the investigation to make the search at night.

(5) Any person making an investigation under this section may, upon giving a receipt therefor, remove any books, records, documents or things examined under subsection (2) or (4) relating to the member whose practice is being investigated and to the subject-matter of the investigation for the purpose of making copies of such books, records or documents, but such copying shall be carried out with reasonable dispatch and the books, records or documents in question shall be promptly thereafter returned to the member whose practice is being investigated.

Removal of
books, etc.

(6) Any copy made as provided in subsection (5) and certified to be a true copy by the person making the investigation is admissible in evidence in any action, proceeding or prosecution as *prima facie* proof of the original book, record or document and its contents.

Admissibility
of copies

(7) The Registrar shall report the results of the investigation to the Council or the Executive Committee or to such other committee as he or she considers appropriate.

Report of
Registrar

67r.—(1) Every person employed in the administration of this Part, including any person making an inquiry or investigation under section 67q, and any member of the Council or a Committee, shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties, employment, inquiry or investigation under section 67q and shall not communicate any such matters to any other person except,

Matters
confidential

- (a) as may be required in connection with the administration of this Part and the regulations and by-laws or any proceedings under this Part or the regulations; or
- (b) to his or her counsel; or

- (c) with the consent of the person to whom the information relates.

Testimony
in civil
suit

(2) No person to whom subsection (1) applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained by the person in the course of his or her duties, employment, inquiry or investigation except in a proceeding under this Part or the regulations or by-laws.

Restraining
orders

67s.—(1) Where it appears to the College that any person does not comply with any provision of this Part or the regulations, notwithstanding the imposition of any penalty in respect of such non-compliance and in addition to any other rights it may have, the College may apply to a judge of the High Court for an order directing the person to comply with the provision, and upon the application the judge may make such order or such other order as the judge thinks fit.

Appeal

(2) An appeal lies to the Divisional Court from an order made under subsection (1).

Penalties

67t.—(1) Every person who contravenes section 67h is guilty of an offence and on conviction is liable for the first offence to a fine of not more than \$2,000 and for each subsequent offence to a fine of not more than \$2,000 or to imprisonment for a term of not more than six months, or to both.

Idem,
use of
titles

(2) Subject to the provisions of Parts II and V, any person not licensed under this Part or Part III who takes or uses any name, title, addition or description implying or calculated to lead people to infer that he or she is licensed or registered under this Part or is recognized by law or otherwise as a midwife, or who assumes, uses or employs the description or title "midwife" or advertises or holds himself or herself out as such, is guilty of an offence and on conviction is liable for the first offence to a fine of not more than \$1,000 and for each subsequent offence to a fine of not more than \$2,000.

Idem

(3) Any person who obstructs a person appointed to make an investigation under section 67t in the course of his or her duties is guilty of an offence and on conviction is liable to a fine not exceeding \$2,000.

Commence-
ment

2. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

3. The short title of this Act is the *Health Disciplines Amendment Act, 1985*.

1ST SESSION, 33RD LEGISLATURE, ONTARIO

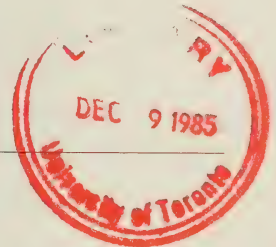
34 ELIZABETH II, 1985

Bill 68

An Act to amend the Securities Act

The Hon. M. Kwinter

Minister of Consumer and Commercial Relations



1st Reading December 3rd, 1985

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTES

The principal purposes of the Bill are as follows:

1. Under section 2, the Lieutenant Governor in Council will be authorized to appoint up to two additional persons as members of the Commission and to designate an additional Vice-Chairman.
2. Under the *Business Corporations Act, 1982*, provision is made for the clearing of securities through the facilities of a clearing agency recognized by the Commission. The proposed clause 18 (1) (a), section 21a and paragraph 18a of section 139 of the Act, as set out in sections 3, 4 and 12 of the Bill, provide for a regulatory framework with respect to the recognition of such clearing agencies. The new definitions set out in section 1 of the Bill are complementary to the provisions related to clearing agencies.
3. Under section 7, Part XIX of the Act is re-enacted. Part XIX relates to take-over bids and issuer bids. Among the significant changes are the following:
 1. The requirement for follow-up offers as set out in the present subsection 91 (1) of the Act is replaced by new restrictions on the availability of the private agreement exemption. (Proposed clause 92 (1) (c))
 2. An early warning system is established whereby, when an offeror's holdings in any class of voting or non-voting participating securities of an issuer reaches 10 per cent, the offeror will be required to make public disclosure of the fact. (Proposed section 100)
 3. Provision is made for the integration with the bid of acquisitions made through private transactions during the ninety day period preceding a take-over bid so that offerees under the bid will receive consideration equal to the consideration paid in the private transactions. (Proposed subsection 93 (4))
 4. An offeror and those acting jointly or in concert with an offeror will be treated as one offeror.
 5. Restrictions on conditions in take-over bids are removed.
 6. The take-over bid and issuer bid requirements in the proposed sections 94 to 99 will be made applicable to voluntary acquisitions of non-voting participating securities.
 7. Take-over bids and issuer bids that are made in jurisdictions with acceptable rules related to bids and that have slight connection with Ontario will be exempted from the take-over bid and issuer bid requirements of the Act. (Proposed clauses 92 (1) (e) and 92 (3) (h))
 8. Restrictions will apply to acquisitions of securities that were subject to a take-over bid or an issuer bid for a period of twenty days following the expiry of the bid. (Proposed subsection 93 (6))
 9. Amendments are made to the rules governing take-over bids and issuer bids.
 10. Under the proposed section 100e, the existing Part XIX will continue to apply in respect of take-over bids and issuer bids commenced before the new Part XIX comes into force.
 11. New remedial powers are conferred on the Commission and on the High Court. (Proposed sections 100c and 100d)

The amendments to the Act set out in sections 5, 6, 8, 9, 10 and 11 of the Bill are complementary to the enactment of the new Part XIX of the Act.

Bill 68

1985

An Act to amend the Securities Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 1 (1) of the *Securities Act*, being chapter 466 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following paragraphs:

2a. “clearing agency” means a person or company that acts as an intermediary in paying funds or delivering securities, or both, in connection with trades in securities and that provides centralized facilities for the clearing of trades in securities;

.

34a. “recognized clearing agency” means a person or company that is designated as a recognized clearing agency by the Commission.

2. Subsection 2 (2) of the said Act is repealed and the following substituted therefor:

(2) The Commission shall be composed of a Chairman and not more than ten or less than eight other members, appointed by the Lieutenant Governor in Council, two of whom may be designated as Vice-Chairmen. Appointments

3. Clause 18 (1) (a) of the said Act is repealed and the following substituted therefor:

(a) the financial affairs of a recognized clearing agency, registrant or reporting issuer; and

.

4. The said Act is amended by adding thereto the following Part:

PART VIII-A

CLEARING AGENCIES

Recognition
of clearing
agencies

21a.—(1) Upon the application of a person or company carrying on or proposing to carry on the business of a clearing agency, the Commission may designate the person or company as a recognized clearing agency where the Commission is satisfied that to do so would be in the public interest and that the person or company can comply with the regulations and all terms and conditions imposed by the Commission with respect to the designation.

Commission's
powers

(2) The Commission, in designating a person or company as a recognized clearing agency, shall make the designation in writing and the designation may be made subject to such terms and conditions as the Commission may impose.

Idem

(3) The Commission, after giving a recognized clearing agency an opportunity to be heard, may suspend or cancel its designation as a recognized clearing agency or may impose terms and conditions upon the designation where in its opinion such action is in the public interest.

Idem

(4) The Commission, where it appears to it to be in the public interest, may make any decision with respect to any constating document, general agreement with its participants or members, by-law, rule, regulation, procedure or practice of a recognized clearing agency, including, without limiting the generality of the foregoing, suspending the operation of or requiring an amendment to any such constating document, general agreement, by-law, rule, regulation, procedure or practice.

Review of
decisions of
recognized
clearing
agency

(5) Any person or company directly affected by any direction, order or decision made under any by-law, rule, regulation, procedure or practice of a recognized clearing agency may apply to the Commission for a hearing and review thereof and section 8 applies to the hearing and review in the same manner as to the hearing and review of a decision of the Director.

5. Paragraph 17 of subsection 34 (1) of the said Act is repealed and the following substituted therefor:

17. A trade in a security to a person or company pursuant to a take-over bid or issuer bid made by that person or company.

6. Clause 71 (1) (k) of the said Act is repealed and the following substituted therefor:

- (k) the trade is made in a security to a person or company pursuant to a take-over bid or issuer bid made by that person or company.

7. Part XIX of the said Act is repealed and the following substituted therefor:

PART XIX

TAKE-OVER BIDS AND ISSUER BIDS

88.—(1) In this Part,

Definitions

“business day” means a day other than a Saturday or a holiday;

“class of securities” includes a series of a class of securities;

“equity security” means any security of an issuer that carries a residual right to participate in the earnings of the issuer and, upon the liquidation or winding up of the issuer, in its assets;

“formal bid” means,

- (a) a take-over bid or an issuer bid to which section 94 applies,
- (b) a take-over bid that is exempted from sections 94 to 99 or an issuer bid that is exempted from sections 94, 95, 96, 97 and 99,
 - (i) by reason of an exemption under clause 92 (1) (a) or 92 (3) (e), if the offeror is required to deliver to every security holder whose last address as shown on the books of the offeree issuer is in Ontario a disclosure document of the type contemplated by subsection 127 (10), or
 - (ii) by reason of an exemption under clause 92 (1) (e) or 92 (3) (h), if the offeror is required to deliver disclosure material relating to the bid to holders of the class of securities subject to the bid;

“interested person” means, for the purposes of sections 100c and 100d,

- (a) an offeree issuer,
- (b) a security holder, director or officer of an offeree issuer,
- (c) an offeror,
- (d) the Director, and
- (e) any person or company not referred to in clauses (a) to (d) who in the opinion of the Commission or the Court, as the case may be, is a proper person to make an application under section 100c or 100d, as the case may be;

“issuer bid” means an offer to acquire or redeem securities of an issuer made by the issuer to any person or company who is in Ontario or to any security holder of the issuer whose last address as shown on the books of the issuer is in Ontario and includes a purchase, redemption or other acquisition of securities of the issuer by the issuer from any such person or company, but does not include an offer to acquire or redeem debt securities that are not convertible into securities other than debt securities;

“offer to acquire” includes,

- (a) an offer to purchase, or a solicitation of an offer to sell, securities,
- (b) an acceptance of an offer to sell securities, whether or not such offer to sell has been solicited,

or any combination thereof, and the person or company accepting an offer to sell shall be deemed to be making an offer to acquire to the person or company that made the offer to sell;

“offeree issuer” means an issuer whose securities are the subject of a take-over bid, an issuer bid or an offer to acquire;

“offeror” means a person or company who makes a take-over bid, an issuer bid or an offer to acquire;

“offeror’s securities” means securities of an offeree issuer beneficially owned, or over which control or direction is exercised, on the date of an offer to acquire, by an offeror

or any person or company acting jointly or in concert with the offeror;

“published market” means, as to any class of securities, any market on which such securities are traded if the prices at which they have been traded on that market are regularly published in a *bona fide* newspaper or business or financial publication of general and regular paid circulation;

“take-over bid” means an offer to acquire outstanding voting or equity securities of a class made to any person or company who is in Ontario or to any security holder of the offeree issuer whose last address as shown on the books of the offeree issuer is in Ontario, where the securities subject to the offer to acquire, together with the offeror’s securities, constitute in the aggregate 20 per cent or more of the outstanding securities of that class of securities at the date of the offer to acquire.

(2) For the purposes of this Part,

Computation
of time,
expiry
of bid

- (a) a period of days shall be computed as commencing on the day next following the event which began the period and terminating at midnight on the last day of the period, except that if the last day of the period does not fall on a business day, the period terminates at midnight on the next business day; and
- (b) a take-over bid or an issuer bid expires at the later of,
 - (i) the end of the period, including any extension, during which securities may be deposited pursuant to the bid, and
 - (ii) the time at which the offeror becomes obligated by the terms of the bid to take-up or reject securities deposited thereunder.

(3) For the purposes of this Part,

Convertible
securities

- (a) a security shall be deemed to be convertible into a security of another class if, whether or not on conditions, it is or may be convertible into or exchangeable for, or if it carries the right or obligation to acquire, a security of the other class, whether of the same or another issuer; and

- (b) a security that is convertible into a security of another class shall be deemed to be convertible into a security or securities of each class into which the second-mentioned security may be converted, either directly or through securities of one or more other classes of securities that are themselves convertible.

Deemed
beneficial
ownership

89.—(1) For the purposes of this Part, in determining the beneficial ownership of securities of an offeror or of any person or company acting jointly or in concert with the offeror, at any given date, the offeror, person or company shall be deemed to have acquired and be the beneficial owner of a security, including an unissued security, if the offeror, person or company is the beneficial owner of any security convertible within sixty days following such date into such a security or has the right or obligation, whether or not on conditions, to acquire within such sixty days beneficial ownership of the security whether through the exercise of an option, warrant, right or subscription privilege or otherwise.

Calculation
of
holdings,
joint offers

(2) Where two or more offerors acting jointly or in concert make one or more offers to acquire securities of a class, the securities subject to any such offer or offers to acquire shall be deemed to be securities subject to the offer to acquire of each such offeror for the purpose of determining whether any such offeror is making a take-over bid.

Unissued
securities
deemed
outstanding

(3) Where an offeror or any person or company acting jointly or in concert with the offeror is deemed by reason of subsection (1) to be the beneficial owner of unissued securities, the securities shall be deemed to be outstanding for the purpose of calculating the number of outstanding securities of that class in respect of that offeror's offer to acquire.

Acting jointly
or in concert

90.—(1) For the purposes of this Part, it is a question of fact as to whether a person or company is acting jointly or in concert with an offeror and, without limiting the generality of the foregoing, the following shall be presumed to be acting jointly or in concert with an offeror:

1. Every person or company who, as a result of any agreement, commitment or understanding, whether formal or informal, with the offeror or with any other person or company acting jointly or in concert with the offeror, acquires or offers to acquire securities of the issuer of the same class as those subject to the offer to acquire.
2. Every person or company who, as a result of any agreement, commitment or understanding, whether

formal or informal, with the offeror or with any other person or company acting jointly or in concert with the offeror, intends to exercise jointly or in concert with the offeror or with any other person or company acting jointly or in concert with the offeror any voting rights attaching to any securities of the offeree issuer.

3. Every associate and affiliate of the offeror.

(2) Notwithstanding subsection (1), a registered dealer acting solely in an agency capacity for the offeror in connection with a take-over bid or an issuer bid and not executing principal transactions for its own account in the class of securities subject to the offer to acquire or performing services beyond customary dealer's functions shall not be presumed solely by reason of such agency relationship to be acting jointly or in concert with the offeror in connection with the bid. Limitation

91. For the purposes of this Part, a reference to an offer to acquire or to the acquisition or ownership of securities or to control or direction over securities shall be construed to include a direct or indirect offer to acquire or the direct or indirect acquisition or ownership of securities, or the direct or indirect control or direction over securities, as the case may be. Application to direct and indirect offers, etc.

92.—(1) Subject to the regulations, a take-over bid is exempt from sections 94 to 99 if, Exempted take-over bids

- (a) the bid is made through the facilities of a stock exchange recognized by the Commission for the purposes of this clause;
- (b) the bid is for not more than 5 per cent of the outstanding securities of a class of securities of the issuer and,
 - (i) the aggregate number of securities acquired by the offeror and any person or company acting jointly or in concert with the offeror within any period of twelve months in reliance upon the exemption provided by this clause does not, when aggregated with acquisitions made by the offeror and any person or company acting jointly or in concert with the offeror in reliance upon the exemptions provided by clauses (a) and (c), constitute in excess of 5 per cent of the outstanding securi-

ties of that class of the issuer at the commencement of the twelve month period, and

- (ii) if there is a published market for the securities acquired, the value of the consideration paid for any of the securities acquired is not in excess of the market price at the date of acquisition determined in accordance with the regulations plus reasonable brokerage fees or commissions actually paid;
- (c) all of the following conditions apply,
 - (i) purchases are made from not more than five persons or companies in the aggregate, including persons or companies outside of Ontario,
 - (ii) the bid is not made generally to security holders of the class of securities that is the subject of the bid, and
 - (iii) the value of the consideration paid for any of the securities, including brokerage fees or commissions, does not exceed 115 per cent of the market price of securities of that class at the date of the bid determined in accordance with the regulations;
- (d) the offeree issuer is not a reporting issuer, there is not a published market in respect of the securities that are the subject of the bid, and the number of holders of securities of that class is not more than fifty, exclusive of holders who are in the employment of the offeree issuer or an affiliate of the offeree issuer, and exclusive of holders who were formerly in the employment of the offeree issuer or an affiliate of the offeree issuer and who while in that employment were, and have continued after that employment to be, security holders of the offeree issuer;
- (e) the number of holders, whose last address as shown on the books of the offeree issuer is in Ontario, of securities of the class subject to the bid and of securities convertible into securities of that class is fewer than fifty and the securities held by such holders constitute, in the aggregate, less than 2 per cent of the outstanding securities of that class, the bid is made in compliance with the laws of a jurisdiction that is recognized for the purposes of this clause by

the Commission, and all material relating to the bid that is sent by the offeror to holders of securities of the class that is subject to the bid is concurrently sent to all holders of such securities whose last address as shown on the books of the offeree issuer is in Ontario and filed; or

- (f) it is exempted by the regulations.

(2) For the purposes of clause (1) (c), where an offeror makes an offer to acquire securities from a person or company and the offeror knows or ought to know after reasonable enquiry that,

Determina-
tion
of number of
security
holders

- (a) one or more other persons or companies on whose behalf that person or company is acting as nominee, agent, trustee, executor, administrator or other legal representative has a direct beneficial interest in those securities, then each of such others shall be included in the determination of the number of persons and companies to whom the offer to acquire has been made, but, where an *inter vivos* trust has been established by a single settlor or where an estate has not vested in all persons beneficially entitled thereto, the trust or estate shall be considered a single security holder in such determination; or
- (b) the person or company acquired the securities in order that the offeror might make use of the exemption provided by clause (1) (c), then each person or company from whom those securities were acquired shall be included in the determination of the number of persons and companies to whom the offer to acquire has been made.

(3) Subject to the regulations, an issuer bid is exempt from sections 94, 95, 96, 97 and 99 if,

Exempted
issuer bids

- (a) the securities are purchased, redeemed or otherwise acquired in accordance with terms and conditions attaching thereto that permit the purchase, redemption or acquisition of the securities by the issuer without the prior agreement of the owners of the securities, or where the securities are acquired to meet sinking fund or purchase fund requirements;
- (b) the purchase, redemption or other acquisition is required by the instrument creating or governing the class of securities or by the statute under which

the issuer was incorporated, organized or continued;

- (c) the securities carry with them or are accompanied by a right of the owner of the securities to require the issuer to redeem or repurchase the securities and the securities are acquired pursuant to the exercise of such right;
- (d) the securities are acquired from a current or former employee of the issuer or of an affiliate of the issuer, and if there is a published market in respect of the securities,
 - (i) the value of the consideration paid for any of the securities acquired does not exceed the market price of the securities at the date of the acquisition determined in accordance with the regulations, and
 - (ii) the aggregate number or, in the case of convertible debt securities, the aggregate principal amount of securities acquired by the issuer within a period of twelve months in reliance on the exemption provided by this clause does not exceed 5 per cent of the securities of that class issued and outstanding at the commencement of the period;
- (e) the bid is made through the facilities of a stock exchange recognized by the Commission for the purpose of this clause;
- (f) following the publication of a notice of intention in the form and manner prescribed by the regulations, the issuer purchases securities in the normal course in the open market, including through the facilities of a stock exchange, if the aggregate number, or, in the case of convertible debt securities, the aggregate principal amount, of securities acquired by the issuer within a period of twelve months in reliance on the exemption provided by this clause does not exceed 5 per cent of the securities of that class issued and outstanding at the commencement of the period;
- (g) the issuer is not a reporting issuer, there is not a published market in respect of the securities that are the subject of the bid and the number of holders of securities of the issuer is not more than fifty,

exclusive of holders who are in the employment of the issuer or an affiliate of the issuer, and exclusive of holders who were formerly in the employment of the issuer or an affiliate of the issuer and who while in that employment were, and have continued after the employment to be, security holders of the issuer;

- (h) the number of holders, whose last address as shown on the books of the issuer is in Ontario, of securities of the class subject to the bid and of securities convertible into securities of that class is fewer than fifty and the securities held by such holders constitute, in the aggregate, less than 2 per cent of the outstanding securities of that class, the bid is made in compliance with the laws of a jurisdiction that is recognized for the purposes of this clause by the Commission, and all material relating to the bid that is sent by the offeror to holders of securities of the class that is subject to the bid is concurrently sent to all holders of such securities whose last address as shown on the books of the issuer is in Ontario and filed; or

- (i) it is exempted by the regulations.

(4) A bid that is made in reliance upon any exemption in this section through the facilities of a stock exchange shall be made in accordance with the by-laws, regulations and policies of the exchange.

Stock
exchange
requirements

93.—(1) In this section “offeror” means,

Definition

- (a) an offeror making a formal bid other than a bid referred to in clause 92 (1) (e) or 92 (3) (h);
- (b) a person or company acting jointly or in concert with an offeror referred to in clause (a);
- (c) a security holder of an offeror referred to in clause (a) who, as regards the offeror, is a person or company or a member of a combination of persons or companies referred to in subparagraph iii of paragraph 11 of subsection 1 (1) or an associate or affiliate of such security holder.

(2) An offeror shall not offer to acquire, or make or enter into any agreement, commitment or understanding to acquire beneficial ownership of any securities of the class that are subject to the bid or of any securities convertible into securities of

Restrictions
on
acquisitions
during bid

that class otherwise than pursuant to the bid on and from the day of the announcement of the offeror's intention to make the bid until the expiry of the bid.

Permitted
purchases
during
take-over bid

(3) Notwithstanding subsection (2), an offeror making a take-over bid may purchase, through the facilities of a stock exchange recognized by the Commission for the purpose of clause 92 (1) (a), securities of the class that are subject to the bid and securities convertible into securities of that class commencing on the third business day following the date of the bid until the expiry of the bid, if,

- (a) the intention to make such purchases is stated in the take-over bid circular;
- (b) the aggregate number of securities acquired under this subsection does not constitute, in the aggregate, in excess of 5 per cent of the outstanding securities of that class as at the date of the bid; and
- (c) the offeror issues and files a press release forthwith after the close of business of the exchange on each day on which securities have been purchased under this subsection disclosing the number of securities purchased on that day, the highest price paid for the securities on that day, the aggregate number of securities purchased to and including that day during the currency of the take-over bid and the average price paid for the securities.

Restrictions
on
acquisition
during issuer
bid

(4) An offeror shall not offer to acquire, or make or enter into any agreement, commitment or understanding to acquire, beneficial ownership of any securities of the class that are subject to the bid or of any securities convertible into securities of that class otherwise than pursuant to the bid on and from the day of the announcement of the offeror's intention to make the bid until the bid's expiry, but this subsection does not apply so as to prevent the offeror from purchasing, redeeming or otherwise acquiring any such securities during such period in reliance on an exemption under clause 92 (3) (a), (b) or (c).

Integration
with pre-bid
private
transactions

(5) Where a take-over bid that is a formal bid is made by an offeror and, within the period of ninety days immediately preceding the bid, the offeror acquired beneficial ownership of securities of the class subject to the bid or of any securities convertible into securities of that class pursuant to a transaction not generally available on identical terms to holders of that class of securities,

- (a) the offeror shall offer consideration for securities deposited under the bid identical to the highest consideration that was paid on a per security basis under any of such prior transactions or the offeror shall offer the cash equivalent of such consideration; and
- (b) the offeror shall offer to acquire under the bid that percentage of securities of the class subject to the bid that is at least equal to the highest percentage that the number of securities acquired from a seller in such a prior transaction was of the total number of securities of that class beneficially owned by such seller at the time of the prior transaction.

(6) An offeror shall not acquire beneficial ownership of securities of the class that was subject to the bid or of any securities convertible into securities of that class by way of a transaction that is not generally available on identical terms to holders of that class of securities during the period beginning with the expiry of the bid and ending at the end of the twentieth business day thereafter, and whether or not any securities are taken up under the bid.

Restriction
on
post-bid
acquisition

(7) Subsections (5) and (6) do not apply to trades effected in the normal course on a published market, so long as,

Exceptions,
normal
course
trades

- (a) any broker acting for the purchaser or seller does not perform services beyond the customary broker's function and does not receive more than reasonable fees or commissions;
- (b) the purchaser or any person or company acting for the purchaser does not solicit or arrange for the solicitation of offers to sell securities of the class subject to the bid; and
- (c) the seller or any person or company acting for the seller does not solicit or arrange for the solicitation of offers to buy securities of the class subject to the bid.

(8) An offeror shall not, except pursuant to the bid, sell or make or enter into any agreement, commitment or understanding to sell any securities of the class subject to the bid or securities convertible into securities of that class, on and from the day of the announcement of the offeror's intention to make the bid until its expiry.

Sales during
bid
prohibited

Exception

(9) Notwithstanding subsection (8), an offeror, before the expiry of a bid, may make or enter into an arrangement, commitment or understanding to sell securities that may be taken up by the offeror pursuant to a bid, after the expiry of the bid, if the intention to sell is disclosed in the take-over bid circular or issuer bid circular, as the case may be.

General provisions

94. Subject to the regulations, the following rules apply to every take-over bid and issuer bid:

Delivery of bid

1. The bid shall be made to all holders of securities of the class that is subject to the bid who are in Ontario, and delivered by the offeror to all holders, whose last address as shown on the books of the offeree issuer is in Ontario, of securities of that class and of securities that, before the expiry of the bid, are convertible into securities of that class.

Minimum deposit period

2. The offeror shall allow at least twenty-one days from the date of the bid during which securities may be deposited pursuant to the bid.

When taking up prohibited

3. No securities deposited pursuant to the bid shall be taken up by the offeror until the expiration of twenty-one days from the date of the bid.

Withdrawal

4. Securities deposited pursuant to the bid may be withdrawn by or on behalf of a depositing security holder,
 - i. at any time before the expiration of twenty-one days from the date of the bid,
 - ii. at any time before the expiration of ten days from the date of a notice of change or variation under section 97, other than a notice of variation referred to in subsection 97 (6), if the securities have not been taken up by the offeror at the date of the notice, and
 - iii. where the securities have not been taken up and paid for by the offeror, after forty-five days from the date of the bid.

Notice of withdrawal

5. Notice of withdrawal of any securities under paragraph 4 shall be made by or on behalf of the depositing security holder by a method that provides the depositary designated under the bid with a written or printed copy and, to be effective, the notice must be actually received by the depositary and, where

notice is given in accordance with this paragraph, the offeror shall return the securities to the depositing security holder.

6. Where the bid is made for less than all of the class of securities subject to the bid and where a greater number of securities is deposited pursuant thereto than the offeror is bound or willing to acquire under the bid, the securities shall be taken up and paid for by the offeror, as nearly as may be *pro rata*, disregarding fractions, according to the number of securities deposited by each depositing security holder. *Pro rata take-up*
7. Where an offeror purchases securities as permitted by subsection 93 (3), the securities so purchased shall be counted in the determination of whether a condition as to the minimum number of securities to be deposited in the bid has been fulfilled, but shall not reduce the number of securities the offeror is bound under the bid to take up. *Effect of market purchases*
8. Subject to paragraph 9, securities deposited pursuant to the bid shall be taken up and paid for by the offeror if the terms and conditions of the bid have been complied with or waived not later than ten days following the expiry of the bid. *When securities must be taken up and paid for*
9. Any securities deposited pursuant to the bid subsequent to the date on which the offeror first takes up securities deposited under the bid shall be taken up and paid for by the offeror within ten days of the deposit of the securities. *Idem*
10. The offeror shall take up and pay for the securities deposited under the bid, in accordance with this section, where all the terms and conditions of the bid have been complied with or waived. *Taking up*
11. Where all the terms and conditions of the bid have been complied with or waived, the offeror shall forthwith issue a notice by press release to that effect, which press release shall disclose the approximate number of securities deposited and the approximate number that will be taken up. *Press release*

95. Where a take-over bid or issuer bid provides that the consideration for the securities deposited pursuant to the bid is to be paid in cash or partly in cash, the offeror shall make adequate arrangements prior to the bid to ensure that the *Financing of bid*

required funds are available to effect payment in full for all securities that the offeror has offered to acquire.

Identical
consideration

96.—(1) Subject to the regulations, where a take-over bid or issuer bid is made, all holders of the same class of securities shall be offered identical consideration.

Collateral
benefit

(2) Where a take-over bid or issuer bid is made, no person or company shall enter into any agreement, commitment or understanding with any holder or beneficial owner of securities of the offeree issuer that has the effect of providing to the holder or owner a consideration of greater value than that offered to the other holders of the same class of securities.

Increasing
consideration

(3) Where a variation in the terms of a take-over bid or issuer bid before the expiry of the bid increases the value of the consideration offered for the securities subject to the bid, the offeror shall pay such increased consideration to each person or company whose securities are taken up pursuant to the bid, whether or not such securities were taken up by the offeror before the variation.

Offeror's
circular

97.—(1) An offeror shall deliver, with or as part of a take-over bid or issuer bid, a take-over bid circular or issuer bid circular, as the case may be.

Notice of
change
in
information

(2) Where, before the expiry of a take-over bid or issuer bid or after the expiry of the bid but before the expiry of all rights to withdraw the relevant securities, a change has occurred in the information contained in a take-over bid circular or issuer bid circular or in any notice of change or notice of variation that would reasonably be expected to affect the decision of the holders of the securities of the offeree issuer to accept or reject the bid, a notice of the change shall be delivered to every person or company to whom the circular was required to be delivered and whose securities were not taken up at the date of the occurrence of the change.

Idem

(3) Subsection (2) does not apply to a change that is not within the control of the offeror or of an affiliate of the offeror unless it is a change in a material fact relating to the securities being offered in exchange for securities of the offeree issuer.

Variation in
terms of bid

(4) Where there is a variation in the terms of a take-over bid or issuer bid, including any extension of the period during which securities may be deposited thereunder and whether or not the variation results from the exercise of any right contained in the bid, a notice of the variation shall be delivered to every person or company to whom the take-over bid circu-

lar or issuer bid circular was required to be delivered and whose securities were not taken up at the date of the variation.

(5) Subject to subsection (6), where there is a variation in the terms of a take-over bid or issuer bid, the period during which securities may be deposited pursuant to the bid shall not expire before ten days after the notice of variation has been delivered. Idem

(6) Subsection (5) does not apply to a variation in the terms of a bid consisting solely of, Idem

(a) an increase in the amount of cash offered for the securities that are subject to the bid; or

(b) the waiver of a condition in the bid where the consideration offered for the securities that are subject to the bid consists solely of cash.

(7) A take-over bid circular, issuer bid circular, notice of change and notice of variation shall be in the form and shall contain the information required by this Part and the regulations. Content

98.—(1) Where a take-over bid has been made, a directors' circular shall be prepared and delivered by the board of directors of an offeree issuer to every person and company to whom a take-over bid must be delivered under paragraph 1 of section 94, not later than ten days after the date of the bid. Directors' circular

(2) The board of directors shall include in a directors' circular either a recommendation to accept or to reject a take-over bid and the reasons for their recommendation, or a statement that they are unable to make or are not making a recommendation and if no recommendation is made, the reasons for not making a recommendation. Recommendation by board

(3) An individual director or officer may recommend acceptance or rejection of a take-over bid if the director or officer delivers with the recommendation a circular prepared in accordance with the regulations. Individual officer's or director's circular

(4) Where a board of directors is considering recommending acceptance or rejection of a take-over bid, it shall, at the time of sending or delivering a directors' circular, advise its security holders of this fact and may advise them not to tender their securities until further communication is received from the directors. Advising of consideration

Advising of
decision of
directors

(5) Where subsection (4) applies, the board of directors shall deliver the recommendation or the decision not to make a recommendation at least seven days before the scheduled expiry of the period during which securities may be deposited under the bid.

Notice of
change

(6) Where, before the expiry of a take-over bid or after the expiry of the bid but before the expiry of all rights to withdraw the securities that have been deposited under the bid,

- (a) a change has occurred in the information contained in a directors' circular or in any notice of change to a directors' circular that would reasonably be expected to affect the decision of the holders of the securities to accept or reject the bid, the board of directors of the offeree issuer shall forthwith deliver a notice of the change to every person or company to whom the circular was required to be sent disclosing the nature and substance of the change; or
- (b) a change has occurred in the information contained in an individual director's or officer's circular or any notice of change thereto that would reasonably be expected to affect the decision of the holders of the securities to accept or reject the bid, other than a change that is not within the control of the individual director or officer, as the case may be, the individual director or officer, as the case may be, shall forthwith deliver a notice of change in relation thereto to the board of directors.

Circulation of
individual
circulars and
notices

(7) Where an individual director or officer submits a circular under subsection (3) or a notice of change under clause (6) (b) to the board of directors, the board, at the offeree issuer's expense, shall deliver a copy of the circular or notice to the persons and companies referred to in subsection (1).

Content

(8) A directors' circular, director's or officer's circular and a notice of change shall be in the form and contain the information required by this Part and the regulations.

Delivery to
offeree issuer

99.—(1) A take-over bid and any notice of change or variation shall be filed and shall be delivered to the offeree issuer at its principal office and an issuer bid and any notice of change or variation shall be filed on the day such bid or notice is delivered to holders of securities of the offeree issuer, or as soon as practicable thereafter.

Delivery to
offeree issuer
and
Commission

(2) Every directors' circular and every individual director's or officer's circular or any notice of change in relation thereto

that is delivered to security holders of an offeree issuer shall be filed and shall be delivered to the offeror at its principal office on the day the directors' circular or individual director's or officer's circular or the notice of change is delivered to the holders of securities of the offeree issuer, or as soon as practicable thereafter.

(3) Except as provided by the regulations, a take-over bid or issuer bid, a take-over bid circular, an issuer bid circular, a directors' circular, an individual director's or officer's circular and every notice of change or variation in any such bid or circular shall be mailed by prepaid first class mail to the intended recipient and any bid, circular or notice so mailed shall be deemed to have been delivered and such bid, circular or notice shall be deemed conclusively for the purposes of sections 94, 97 and 98 and this section to have been dated as of the date on which it was so mailed to all or substantially all of the persons and companies entitled to receive it.

Delivery by
mail, date of
bid, etc.

100.—(1) Every person or company that, other than by means of a formal bid, acquires beneficial ownership of, or the power to exercise control or direction over, voting or equity securities of any class of a reporting issuer that, together with such person's or company's securities of that class, would constitute 10 per cent or more of the outstanding securities of that class,

Securities,
reports of
acquisitions

- (a) shall issue and file forthwith a press release disclosing the identity of the offeror and the extent of the beneficial ownership, control and direction; and
- (b) within two business days, shall file a report disclosing the prescribed information.

(2) Where a person or company is required to file a report under subsection (1) or a further report under this subsection and the person or company acquires beneficial ownership of, or the power to exercise control or direction over, an additional 2 per cent or more of the outstanding securities of the class or there is a change in any other material fact in such a report, the person or company that made the filing,

Change in
material facts

- (a) shall issue and file forthwith a press release disclosing the nature of the change; and
- (b) within two business days of the change, shall file a further report disclosing the nature of the change.

(3) During the period commencing on the occurrence of an event in respect of which a report or further report is required

Restrictions
on purchases

to be filed under this section and terminating on the expiry of one business day from the date that the report or further report is filed, the person or company required to file the report or further report and persons and companies acting jointly or in concert with such first mentioned person or company shall not acquire or offer to acquire beneficial ownership of any securities of the class in respect of which the report or further report is required to be filed or any securities convertible into securities of that class.

Exception

(4) Subsection (3) does not apply to an offeror that is the beneficial owner of, or has the power to exercise control or direction over, securities that constitute 20 per cent or more of the outstanding securities of that class.

Press release
re:
acquisitions
by person
other
than offeror
during bid

100a.—(1) Where, after a formal bid has been made for equity securities of an offeree issuer that is a reporting issuer and before the expiry of the bid, an offeror, other than the person or company making the bid, acquires beneficial ownership of, or the power to exercise control or direction over, voting or equity securities of any class of the offeree issuer which, when added to such offeror's securities of that class, constitute 5 per cent or more of the outstanding securities of a class of equity securities, the offeror shall, not later than the opening of trading on the next business day, issue a press release disclosing the offeror's identity, the number of securities of that class acquired since the commencement of the bid and the number of securities of that class beneficially owned or over which control or direction is exercised by the offeror and every person or company acting jointly or in concert with the offeror and, forthwith, the offeror shall file a copy of the press release.

Further press
releases

(2) Where an offeror that has filed a press release under subsection (1) or a further press release under this subsection or any person or company acting jointly or in concert with the offeror acquires beneficial ownership of, or control or direction over, voting or equity securities of the class in respect of which the press release was filed, which, when added to the securities of that class acquired after the filing of the press release by the offeror and any person or company acting jointly or in concert with the offeror, aggregates an additional 2 per cent or more of the class of outstanding securities, the offeror shall, not later than the opening of trading on the next business day, issue a further press release disclosing all changes in information since the filing of the immediately preceding press release required under this section and, forthwith, the offeror shall file a copy of the press release.

100b. Where the facts required to be reported under section 100 and Part XX are identical, a report is required only under the provision requiring the earlier report.

No
duplication
of reports

100c.—(1) Where, on the application of an interested person, it appears to the Commission that a person or company has not complied or is not complying with this Part or the regulations related to this Part, it may issue, subject to such terms and conditions as it may impose, an order,

Applications
to the
Commission

- (a) restraining the distribution of any document used or issued in connection with a take-over bid or issuer bid;
- (b) requiring an amendment to or variation of any document used or issued in connection with a take-over bid or issuer bid and requiring the distribution of any amended, varied or corrected document; and
- (c) directing any person or company to comply with this Part or the regulations related to this Part or restraining any person or company from contravening this Part or the regulations related to this Part and directing the directors and senior officers of the person or company to cause the person or company to comply with or to cease contravening this Part or the regulations related to this Part.

(2) Upon an application by any interested person, the Commission may, subject to such terms and conditions as it may impose,

Idem

- (a) decide for the purposes of subsection 96 (3) that a collateral agreement, commitment or understanding with a selling security holder is made for reasons other than to increase the value of the consideration paid to the selling security holder for the securities of the selling security holder and that the agreement or arrangement may be entered into notwithstanding that subsection;
- (b) vary any time period set out in this Part and the regulations related to this Part; and
- (c) exempt any person or company from any of the requirements of this Part or the regulations related to this Part where the Commission is satisfied that to do so would not be prejudicial to the public interest.

Applications
to the
High Court

100d.—(1) An interested person may apply to the High Court for an order under this section.

Idem

(2) Where, on an application under subsection (1), the judge hearing the application is satisfied that a person or company has not complied with this Part or the regulations related to this Part, the judge may make such interim or final order as the judge thinks fit, including, without limiting the generality of the foregoing,

- (a) an order compensating any interested person, who is a party to the application for damages suffered as a result of a contravention of this Part or the regulations related to this Part;
- (b) an order rescinding a transaction with any interested person, including the issue of a security or a purchase and sale of a security;
- (c) an order requiring any person or company to dispose of any securities acquired pursuant to or in connection with a take-over bid or an issuer bid;
- (d) an order prohibiting any person or company from exercising any or all of the voting rights attaching to any securities; and
- (e) an order requiring the trial of an issue.

Transition

100e. This Part and section 129 and the regulations related thereto, as they read immediately before the coming into force of this section, shall continue to apply in respect of every take-over bid and issuer bid commenced before the coming into force of this section.

8. Section 103 of the said Act is repealed.

9.—(1) Subsections 127 (1) and (2) of the said Act are repealed and the following substituted therefor:

Liability for
misrepresentation in
circular

(1) Where a take-over bid circular sent to the security holders of an offeree issuer as required by Part XIX contains a misrepresentation, every such security holder shall be deemed to have relied on the misrepresentation and may elect to exercise a right of action for rescission or damages against the offeror or a right of action for damages against,

- (a) every person who at the time the circular was signed was a director of the offeror;

- (b) every person or company whose consent has been filed pursuant to a requirement of the regulations but only with respect to reports, opinions or statements that have been made by the person or company; and
- (c) each person who signed a certificate in the circular other than the persons included in clause (a).

(2) Where a directors' circular or a director's or officer's circular delivered to the security holders of an offeree issuer as required by Part XIX contains a misrepresentation, every such security holder shall be deemed to have relied on such misrepresentation and has a right of action for damages against every director or officer who signed the circular. Idem

(2) Subsection 127 (4) of the said Act is repealed and the following substituted therefor:

(4) No person or company is liable under subsection (1), (2) or (3) if the person or company proves that the security holder had knowledge of the misrepresentation. Defence

(3) Subsection 127 (10) of the said Act is repealed and the following substituted therefor:

(10) Where the offeror,

- (a) in a take-over bid exempted from the provisions of Part XIX by clause 92 (1) (a); or
- (b) in an issuer bid exempted from the provisions of Part XIX by clause 92 (3) (e),

Deemed
take-over
bid circular
or issuer bid
circular

is required, by the by-laws, regulations or policies of the stock exchange through the facilities of which the take-over bid or issuer bid is made, to file with it or to deliver to security holders of the offeree issuer a disclosure document, the disclosure document shall be deemed, for the purposes of this section, to be a take-over bid circular or issuer bid circular, as the case may be, delivered to the security holders as required by Part XIX.

10. Section 129 of the said Act is repealed.

11. Section 130 of the said Act is repealed and the following substituted therefor:

130. A purchaser of a security to whom a prospectus was required to be sent or delivered but was not sent or delivered

Liability of
dealer or
offeror

in compliance with subsection 70 (1) or a security holder to whom a take-over bid and a take-over bid circular or an issuer bid and an issuer bid circular were required to be delivered but were not delivered in compliance with section 94 and subsection 97 (1) has a right of action for rescission or damages against the dealer or offeror who failed to comply with the applicable requirement.

12.—(1) Section 139 of the said Act is amended by adding thereto the following paragraph:

18a. prescribing terms and conditions upon which a person or company may be designated as a recognized clearing agency.

(2) Paragraphs 32 and 33 of the said section 139 are repealed and the following substituted therefor:

32. respecting any other matter necessary or advisable to carry out effectively the intent and purpose of Parts XIX and XX, including, without restricting the generality of the foregoing, providing for exemptions in addition to those set out in subsections 92 (1) and (3), restricting any exemption set out in those subsections, prescribing rules in addition to those set out in section 94 and varying any rule set out in that section and prescribing the form and content of any circular, report or other document required to be delivered or filed.

Commence-
ment

13. This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

14. The short title of this Act is the *Securities Amendment Act, 1985*.

Bill 69

An Act to establish the Insurance Rate Control Board

Mr. Swart



1st Reading December 3rd, 1985
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTE

The Bill establishes an insurance rate control board that would have the power to assure the availability and adequacy of all classes of casualty, property and liability insurance and to fix rates which are just and reasonable.

Bill 69

1985

An Act to establish the Insurance Rate Control Board

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

“Board” means The Insurance Rate Control Board;

“Insurance” means casualty, property and liability insurance;

“Minister” means the Minister of Consumer and Commercial Relations.

2.—(1) A board to be known as “The Insurance Rate Control Board” is hereby established.

Board
established

(2) The Board shall be composed of not fewer than seven and not more than nine members appointed by the Lieutenant Governor in Council from among representatives of labour, consumer and other citizens’ groups.

Composition

3. The Lieutenant Governor in Council may designate one of the members to be chairman of the Board.

Chairman

4. Five members of the Board constitute a quorum.

Quorum

5. The Lieutenant Governor in Council may fill any vacancy among the members of the Board.

Vacancies

6. Subject to the provisions of the *Statutory Powers Procedure Act*, the Board may determine its own procedure for the conduct of hearings.

Procedure
R.S.O. 1980,
c. 484

7. The objects of the Board are and it has power,

Objects and
powers

- (a) to assure availability and adequacy of all classes of insurance;

- (b) on its own initiative or on application by insurance companies, to consider rate changes for insurance generally and for specific classifications;
- (c) to fix insurance rates that are just and reasonable for all classes;
- (d) to conduct public hearings with respect to proposed changes in rates and policy.

Appeal of
decision

8. Any person who in person or in writing makes a submission at a hearing may appeal in writing the decision of the Board to the Lieutenant Governor in Council within twenty-eight days of the date of the decision of the Board.

Annual
report

9. The Board shall make a report annually to the Minister who shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session.

Commence-
ment

10. This Act comes into force on the day it receives Royal Assent.

Short title

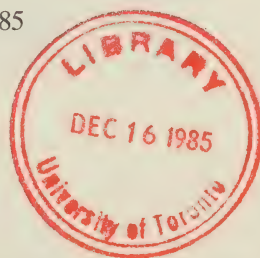
11. The short title of this Act is the *Insurance Rate Control Board Act, 1985*.

Bill 70

An Act to amend the Provincial Offences Act

The Hon. I. Scott
Attorney General

1st Reading December 5th, 1985
2nd Reading
3rd Reading
Royal Assent



EXPLANATORY NOTES

SECTION 1. "Municipality" is defined for all purposes of the Act.

SECTION 2. This permits a justice to enter a default conviction for a municipal by-law offence without proof of the by-law if the defendant does not want to dispute the charge.

SECTION 3. These words are no longer necessary because of section 1, above.

SECTION 4.—Subsection 1. The period for filing a parking infraction certificate in court is extended from thirty to forty-five days.

Subsection 2. At the time of a parking infraction under a municipal by-law, the officer is not required to put the by-law number on the notice of infraction.

Subsection 3. Where an operator, rather than an owner, of a vehicle is being charged with a parking offence, the amendments require service of a parking infraction notice on the operator to be made personally and at the time of the offence. Provision is also made for proof of service.

SECTION 5. A certificate of parking infraction issued under a municipal by-law is not required to contain the number of the by-law as long as the notice of trial does contain the by-law number.

SECTION 6.—Subsection 1. Where a defendant does not want to dispute a municipal parking charge, evidence that there was no request for a hearing and no payment of the fine may be given by certificate of the clerk of the municipality or the clerk's designee. A justice is permitted to enter a conviction for a municipal by-law parking offence without proof of the by-law.

Subsection 2. The words deleted are stricter than the general provisions for paying fines under section 67. The deletion of the words permits section 67 to apply.

SECTIONS 7 and 8. These sections require the payment of administrative fees, as prescribed by the regulations, where fines go into default.

SECTION 9. Section 15 of the Act brings Part II into effect in municipalities two years after Part II is proclaimed in force. Section 149 of the Act is amended to preserve the application of the old procedure during the period between the proclamation of Part II and the expiration of the two year period.

Bill 70

1985

An Act to amend the Provincial Offences Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Section 1 of the *Provincial Offences Act*, being chapter 400 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following subsection:

(1a) In this Act, “municipality” includes a regional, district or metropolitan municipality. Idem

2. Section 9 of the said Act is amended by adding thereto the following subsection:

(2) Where a defendant is deemed to not wish to dispute a charge under subsection (1) in respect of an offence under a by-law of a municipality, the justice shall enter a conviction under clause (1) (a) without proof of the by-law that creates the offence if the certificate of offence is complete and regular on its face. Where conviction without proof of by-law

3. Subsection 15 (2) of the said Act is amended by striking out “including a regional, district or metropolitan municipality” in the second and third lines.

4.—(1) Subsection 16 (1) of the said Act is repealed and the following substituted therefor:

(1) In addition to the procedure set out in Part III for commencing a proceeding by laying an information, a proceeding in respect of a parking infraction may be commenced by filing in the office of the court, Commencement of proceeding

(a) a certificate of parking infraction; and

(b) where the parking infraction is alleged against the defendant as owner of a vehicle, evidence of the ownership of the vehicle,

within forty-five days after the alleged infraction occurred.

(2) Section 16 of the said Act is amended by adding thereto the following subsection:

Municipal
by-laws

(2a) A provincial offences officer may issue a certificate and notice under subsection (2) in respect of a parking infraction under a by-law of a municipality without including on the certificate or notice a reference to the number of the by-law that creates the offence.

(3) The said section 16 is further amended by adding thereto the following subsections:

Service of
notice on
operator

(4) The issuing provincial offences officer may serve the parking infraction notice on the operator of a vehicle by delivering it to the operator personally at the time of the alleged parking infraction.

Certificate
of service

(5) The provincial offences officer who issued the certificate of parking infraction shall certify on the certificate of parking infraction that the officer served the parking infraction notice on the person charged and the date and method of service.

Certificate
as evidence

(6) A certificate of service of a parking infraction notice purporting to be signed by the provincial offences officer issuing it shall be received in evidence and is proof of service in the absence of evidence to the contrary.

5. Section 17 of the said Act is amended by adding thereto the following subsections:

Certificate
not invalid
without
by-law
number

(3) Subject to subsection (4), where a certificate of parking infraction is issued for an infraction under a by-law of a municipality, the certificate is not insufficient or irregular by reason only that it does not identify the by-law that creates the offence.

Exception

(4) Where the defendant delivers a notice under subsection (1), subsection (3) does not apply unless the notice of trial given to the defendant under subsection (2) identifies the by-law.

6.—(1) Section 19 of the said Act is amended by adding thereto the following subsections:

Certificate as
evidence

(1a) Where a certificate of parking infraction is issued for an infraction under a by-law of a municipality, a certificate purporting to be signed by the clerk of the municipality, or a person designated by the clerk,

- (a) that payment has not been made under section 18; and
- (b) that notice of the defendant's desire to appear or to be represented at trial has not been delivered to the place specified in the parking infraction notice,

shall be received in evidence and is proof of the facts contained therein in the absence of evidence to the contrary.

(1b) Where a defendant is deemed to not wish to dispute a charge under subsection (1) in respect of a parking infraction under a by-law of a municipality, the justice shall enter a conviction under subsection (1) without proof of the by-law which creates the offence if the justice is satisfied that all other criteria under subsection (1) for entering a conviction have been met.

Where
conviction
without proof
of by-law

(2) Subsection 19 (3) of the said Act is amended by striking out "and the fine or any part of the fine not paid within fifteen days after the giving of the notice shall be deemed to be in default" in the fourth, fifth and sixth lines.

7. The said Act is amended by adding thereto the following section:

70a.—(1) Where the payment of a fine is in default and the time for payment is not extended or further extended under subsection 67 (6), the defendant shall pay the administrative fee prescribed by the regulations.

Fee
where fine
in default

(2) For the purpose of making and enforcing payment, a fee payable under this section shall be deemed to be part of the fine that is in default.

Fee
collectable
as a fine

8. Section 91 of the said Act is amended by adding thereto the following clause:

- (g) prescribing administrative fees for the purposes of subsection 70a (1) for the late payment of fines or classes of fines, and prescribing the classes.

9. Section 149 of the said Act, as enacted by the Statutes of Ontario, 1983, chapter 87, section 1, is amended by adding at the end thereof "or, in the case of parking infractions under municipal by-laws, until Part II applies in the municipality".

10.—(1) This Act, except sections 3, 4, 5 and 6, comes into force on the day it receives Royal Assent.

Commence-
ment

Idem

R.S.O. 1980,
c. 400

(2) Sections 3, 4, 5 and 6 come into force on the day Part II of the *Provincial Offences Act* is proclaimed in force.

Short title

11. The short title of this Act is the *Provincial Offences Amendment Act, 1985*.

Bill 71

An Act to protect the Public Health and Comfort and the Environment by Prohibiting and Controlling Smoking in Public Places

Mr. Sterling

<i>1st Reading</i>	December 5th, 1985
<i>2nd Reading</i>	
<i>3rd Reading</i>	
<i>Royal Assent</i>	



EXPLANATORY NOTE

The Bill prohibits smoking in indoor public places, public vehicles and in certain areas of health facilities and authorizes the Lieutenant Governor in Council to prohibit smoking in the workplace. Provision is made for the designation of smoking areas in public places where to do so will not interfere with non-smokers. Patients in health facilities are given the right to request a non-smoking room. Municipalities are authorized to pass non-smoking by-laws.

Bill 71**1985**

**An Act to protect the
Public Health and Comfort and the Environment by
Prohibiting and Controlling Smoking in Public Places**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

“enclosed public place” means,

- (a) an enclosed indoor area that is open to the public during the times that it is open to the public and, without limiting the generality of the foregoing, includes those parts of a restaurant, health care facility, retail store, commercial establishment or an office building or educational institution that are normally open to clients, customers, students or other members of the public, and
- (b) any common carrier or vehicle available for hire to the general public;

“health care facility” means a facility in which patients are or may be admitted for medical treatment or care and includes a hospital, nursing home and medical clinic;

“prescribed” means prescribed by the regulations made under this Act;

“smoking” includes holding or having control over a lighted cigarette, cigar or pipe or any other lighted smoking equipment;

“smoking area” means an area in which smoking is permitted.

2.—(1) Subject to subsection (2), no person shall smoke a cigarette, cigar, pipe or any other lighted smoking equipment in an enclosed public place except as prescribed.

No smoking
in public
place

Designate
smoking
areas

(2) Subject to subsection (3), the person in charge of an enclosed public place may designate a specific area or areas of that place as a smoking area if,

- (a) a reasonably substantial area of the place is not so designated; and
- (b) the existing physical barriers and ventilation systems are adequate to minimize any harmful effects or discomfort the smoking may cause to persons in the area not so designated.

Exception
for schools

(3) Subsection (2) does not apply to those areas of a day care centre, nursery school or an elementary or secondary school to which students have access while students are present in the school or to a school bus transporting students.

Duties of
person in
charge

3. The proprietor or other person in charge of an enclosed public place shall make reasonable efforts to prevent persons from smoking in the place by,

- (a) posting a sign in the prescribed form and manner to notify persons that smoking is prohibited;
- (b) where there are seats in the place, clearly designating a section of seats in which smoking is prohibited;
- (c) asking smokers to refrain from smoking if a client who is suffering discomfort from smoke so requests; or
- (d) taking any other appropriate action.

No smoking
in health
facility

4.—(1) No person shall smoke a cigarette, cigar, pipe or other lighted smoking equipment in the following areas of a health facility,

- (a) any kitchen, laboratory or corridor;
- (b) a patient's room if the patient has requested that there be no smoking in his or her room; or
- (c) the non-smoking area of a waiting room.

Right of
patient to
non-smoking
room

(2) Every patient in a health facility has the right to accommodation in a non-smoking room and the person in charge of a health facility shall ensure that on admission every patient is advised of that right.

5. No person shall smoke a cigarette, cigar, pipe or other lighted smoking equipment in an area of a workplace that is prescribed as a non-smoking area.

No smoking
in
workplace,
if prescribed

6.—(1) Nothing in this Act limits the right of a proprietor or other person in charge of an enclosed public place or a health facility to further limit or ban smoking on all or a part of its premises.

Person in
charge may
further
limit
smoking

(2) The council of a municipality may pass a by-law that further limits or bans smoking in any enclosed public place in that municipality.

Municipal
by-law may
further
limit
smoking

7. Every person who contravenes a provision of this Act or the regulations is guilty of an offence and on conviction is liable to a fine of not more than \$100.

Offence

8. The Lieutenant Governor in Council may make regulations,

Regulations

- (a) exempting certain classes of enclosed public places from the application of this Act where their size makes the application impracticable;
- (b) prescribing the form and manner of posting signs (clause 3 (a));
- (c) defining “workplace” for the purposes of section 5, prohibiting persons from smoking a cigarette, cigar, pipe or other lighted smoking equipment in the workplace or in any class of workplace and authorizing the person in charge of a workplace to designate areas of the workplace where smoking is permitted;
- (d) respecting any matter necessary or advisable to carry out effectively the intent and purposes of this Act.

9. This Act comes into force on the day it receives Royal Assent.

Commence-
ment

10. The short title of this Act is the *Non-Smokers' Protection Act, 1985*.

Short title

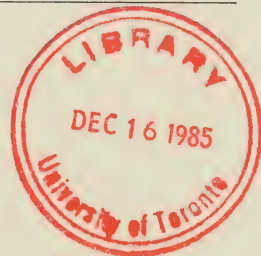
Bill 72

An Act to amend the Powers of Attorney Act

The Hon. I. Scott

Attorney General

1st Reading December 5th, 1985
2nd Reading
3rd Reading
Royal Assent



EXPLANATORY NOTE

The purpose of the amendment is to preserve the original intent that the protection provided by section 3 of the Act is to be available when any authority under a power of attorney comes to an end. The amendment is to remove possible doubt and is made retroactive to the date of the coming into force of the provision being amended.

Bill 72**1985****An Act to amend the Powers of Attorney Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 3 (1) of the *Powers of Attorney Act*, being chapter 386 of the Revised Statutes of Ontario, 1980, is amended by inserting after “terminated” in the first line “or revoked or becomes invalid” and by inserting after “termination” in the fifth line “revocation or invalidity”.

2. This Act shall be deemed to have come into force on the 20th day of December, 1979. Commence-
ment

3. The short title of this Act is the *Powers of Attorney Amendment Act, 1985*. Short title

Bill 73

An Act to amend the Public Vehicles Act

Mr. Martel



1st Reading December 9th, 1985
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTE

The Bill would prevent school bus passengers from standing in the aisles while the bus is in motion.

Subsection 23 (1) of the Act now reads:

(1) No driver or operator shall allow passengers to ride on the fenders or any other part of a public vehicle other than the seats thereof, except that a vehicle may carry as standing passengers in the aisles thereof not more than one-third the number of persons for which seats are provided.

Bill 73**1985****An Act to amend the Public Vehicles Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 23 (1) of the *Public Vehicles Act*, being chapter 425 of the Revised Statutes of Ontario, 1980, is amended by inserting after “vehicle” where it appears the second time in the third line “other than a school bus as defined in section 151 of the *Highway Traffic Act*”.

2. This Act comes into force on the day it receives Royal Assent. Commence-
ment

3. The short title of this Act is the *Public Vehicles Amendment Act, 1985*. Short title

Bill 74

An Act to amend the Operating Engineers Act

The Hon. M. Kwinter

Minister of Consumer and Commercial Relations



1st Reading December 10th, 1985

2nd Reading

3rd Reading

Royal Assent

EXPLANATORY NOTE

The Act currently provides for provisional certificates of qualification to be issued to applicants who qualified for similar certificates in other provinces.

The concept of provisional certificates is being removed but provision is being made for regular certificates to be issued to applicants who qualified in other provinces.

Bill 74

1985

An Act to amend the Operating Engineers Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Paragraph 2 of subsection 15 (1) of the *Operating Engineers Act*, being chapter 363 of the Revised Statutes of Ontario, 1980, is repealed.

2. Section 23 of the said Act, as amended by the Statutes of Ontario, 1982, chapter 42, section 12, is repealed and the following substituted therefor:

23.—(1) The chief officer shall, upon payment of the fee prescribed by the regulations, issue a certificate of qualification to every person who applies therefor and holds a subsisting certificate issued by another province or territory of Canada that qualifies the person to perform the work or duties of an operating engineer or operator in such province or territory.

Certificate of
qualifications

(2) The certificate of qualification issued under subsection (1) shall be of a class that authorizes the holder of the certificate to perform the work and duties that, in the opinion of the chief officer, the holder is qualified to perform in Ontario having regard to the qualifications prescribed by the regulations for applicants for certificates of qualification.

Idem

3.—(1) Clause 37 (b) of the said Act is amended by striking out “and provisional certificates of qualification” in the second and third lines.

(2) Clause 37 (f) of the said Act is repealed and the following substituted therefor:

(f) providing for the issue, renewal and reinstatement of certificates of qualification.

4. This Act comes into force on the day it receives Royal Assent.

Commence-
ment

Short title

5. The short title of this Act is the *Operating Engineers Amendment Act, 1985*.

Bill 75

An Act to amend the Education Act

The Hon. S. Conway
Minister of Education

1st Reading December 12th, 1985
2nd Reading
3rd Reading
Royal Assent

EXPLANATORY NOTES

GENERAL. The Bill provides for governance of French-language instruction where English is the language of the majority, and for governance of English-language instruction where French is the language of the majority.

Sections 1 to 8 of the Bill relate to advisory committees. Section 9 adds new Parts XI-A and XI-B and section 10 adds a complementary amendment.

SECTION 1. The definitions of "board" and "French-speaking person" are revised.

SECTION 2. Section 259 of the Act is revised to add the definition of "board" and to change the reference from "public" to "elementary".

SECTION 3. The definitions of "board", "French-speaking person" and "ratepayer" are revised.

SECTION 4. The criteria for the establishment of a French-language advisory committee are revised.

SECTION 5. The rights of the chairman of an advisory committee are widened in relation to the board. Members of an advisory committee are required to make a declaration of office similar to that of a member of a board.

SECTION 6. The criteria for an English-language advisory committee are revised.

SECTION 7. The amendments to section 274 of the Act are complementary to the other amendments to Part XI.

SECTION 8. This section requires the establishment of new advisory committees within two months after the section comes into force.

SECTION 9. This section adds new Part XI-A to the Act. Part XI-A provides for the election of French-language sections of boards and corresponding English-language sections, beginning at the regular election in 1988.

Section 9 also adds new Part XI-B to the Act. Part XI-B provides for French-language education councils and corresponding English-language education councils that are to hold office until the regular election in 1988.

SECTION 10. This section makes a complementary amendment to section 19 of the *Municipal Elections Act*.

SECTION 11. This section repeals new Part XI-B on the 1st day of December, 1988.

Bill 75

1985

An Act to amend the Education Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Clauses 258 (1) (a) and (c) of the *Education Act*, being chapter 129 of the Revised Statutes of Ontario, 1980, as enacted by the Statutes of Ontario, 1984, chapter 60, section 17, are repealed and the following substituted therefor:

- (a) “board” means a board of education, other than a board of education for an area municipality in The Municipality of Metropolitan Toronto, the members of which are elected under the *Municipal Elections Act*, a county or district combined Roman Catholic separate school board, the Metropolitan Separate School Board or The Windsor Roman Catholic Separate School Board;

R.S.O. 1980,
c. 308

- (c) “French-speaking person” means a child of a person who has the right under subsection 23 (1) or (2), without regard to subsection 23 (3), of the *Canadian Charter of Rights and Freedoms* to have his or her children receive their primary and secondary school instruction in the French language in Ontario.

2. Section 259 of the said Act is repealed and the following substituted therefor:

259.—(1) In this section, “board” means a board of education, other than a board of education for an area municipality in The Municipality of Metropolitan Toronto, the members of which are elected under the *Municipal Elections Act*, a county or district combined Roman Catholic separate school board, the Metropolitan Separate School Board or The Windsor Roman Catholic Separate School Board.

Definition

R.S.O. 1980,
c. 308

Duties and responsibilities of advisory committee in elementary schools

(2) Where a board has established a French-language advisory committee under section 262, or an English-language advisory committee under section 272, the committee has the same duties and responsibilities in respect of the French-language schools and classes or English-language schools and classes, as the case may be, that are provided in the elementary schools operated by the board as it has in respect of French-language instructional units or English-language schools and classes, as the case may be, for secondary school purposes.

3.—(1) Clause 260 (a) of the said Act, as amended by the Statutes of Ontario, 1984, chapter 60, section 18, is repealed and the following substituted therefor:

(a) “board” means a board of education, other than a board of education for an area municipality in The Municipality of Metropolitan Toronto, the members of which are elected under the *Municipal Elections Act*, a county or district combined Roman Catholic separate school board, the Metropolitan Separate School Board or The Windsor Roman Catholic Separate School Board.

R.S.O. 1980,
c. 308

(2) Clause 260 (ca) of the said Act, as enacted by the Statutes of Ontario, 1984, chapter 60, section 18, is repealed and the following substituted therefor:

(ca) “French-speaking person” means a child of a person who is entitled under subsection 23 (1) or (2), without regard to subsection 23 (3), of the *Canadian Charter of Rights and Freedoms* to have his or her children receive their primary and secondary school instruction in the French language in Ontario.

(3) Clause 260 (d) of the said Act is repealed and the following substituted therefor:

(d) “French-speaking ratepayer” means a person who is entitled to vote at an election of members of the board and who has the right under subsection 23 (1) or (2), without regard to subsection 23 (3), of the *Canadian Charter of Rights and Freedoms* to have his or her children receive their primary and secondary school instruction in the French language in Ontario.

4. Subsections 262 (1), (2) and (3) of the said Act are repealed and the following substituted therefor:

(1) A board by resolution shall establish a French-language advisory committee and provide for the holding of elections of members of the committee if,

French-language
advisory
committee

- (a) the board does not operate a French-language instructional unit;
- (b) the board enters or has entered into an agreement or agreements with another board or boards to enable one or more resident pupils of the board to receive instruction in one or more French-language instructional units operated by the other board or boards;
- (c) the calculated enrolment of resident pupils in respect of whom the agreement or agreements are entered into is less than 300 and is less than 10 per cent of the total calculated enrolment of resident pupils of the board, but this clause does not apply until the 1st day of December, 1988; and
- (d) ten or more ratepayers, each of whom has the right under subsection 23 (1) or (2), without regard to subsection 23 (3), of the *Canadian Charter of Rights and Freedoms* to have his or her children receive their primary and secondary school instruction in the French language in Ontario, apply in writing to the board for the establishment of the French-language advisory committee.

(2) The board shall pass the resolution and the elections shall be held within two months after receiving the application.

Resolution

(2a) The committee shall consist of,

Composition
of committee

- (a) not more than three persons appointed by the board from among the members of the board; and
- (b) six persons, who are not members of the board, elected to the committee.

(2b) A person is qualified to be appointed or elected to the committee if,

Qualifications

- (a) the person is qualified to be elected to the board; and
- (b) the person has the right under subsection 23 (1) or (2), without regard to subsection 23 (3), of the

Canadian Charter of Rights and Freedoms to have his or her children receive their primary and secondary school instruction in the French language in Ontario.

Definitions

(3) In this section, "calculated enrolment", "resident pupil" and "total calculated enrolment" have the same meanings as in Part XI-A.

5. Section 268 of the said Act, as amended by the Statutes of Ontario, 1984, chapter 60, section 20, is further amended by renumbering subsection (1) as subsection (1c) and by adding thereto the following subsections:

Attendance
of committee
chairman at
board
meetings

(1) The chairman of the committee has the right,

- (a) to attend meetings of the board in the same manner as a member of the board; and
- (b) to participate in the discussion at a meeting of the board in respect of any matter that is within the jurisdiction of the committee under subsection 267 (1).

Presentation
of
recommen-
dations

(1a) The chairman of the committee has the right to present recommendations of the committee to the board and to speak to the recommendations.

Designation
of member
by chairman

(1b) The chairman of the committee may designate a member of the committee to act in the place of the chairman at any meeting of the board.

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Confiden-
tiality

(1d) The chairman of the committee or a member of the committee designated by the chairman of the committee to attend a meeting of the committee of the whole board is subject to the same rule of confidentiality that applies to members of the board.

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Declaration

(5) Every person elected to a committee, on or before the day of the first meeting of the committee that he or she attends, shall make and subscribe a declaration in the same form with necessary modifications as subsections 185 (1) and (2) require of a person elected to a board and, for the purpose,

- (a) a reference to a person elected to a board shall be deemed to be a reference to a person elected to a committee;
- (b) a reference to a person elected to fill a vacancy on a board shall be deemed to be a reference to a person elected to fill a vacancy on a committee;
- (c) a reference to a meeting shall be deemed to be a reference to a meeting of the committee or, if the person is a member of the committee designated by the chairman to attend a meeting of the board, a meeting of the committee or of the board;
- (d) a reference to the office of trustee shall be deemed to be a reference to the office of member of the committee.

(6) A member of a committee who fails to comply with subsection (5) shall be deemed to have resigned from the committee. Resignation

(7) A member of a committee shall file his or her declaration with the secretary of the board within eight days after making and subscribing the declaration. Filing

6. Subsection 272 (2) of the said Act is repealed and the following substituted therefor:

(2) A board by resolution shall establish an English-language advisory committee and provide for the holding of elections of members of the committee if, English-language advisory committee

- (a) the board does not operate an English-language instructional unit;
- (b) the board enters or has entered into an agreement or agreements with another board or boards to enable one or more resident pupils of the board to receive instruction in one or more English-language instructional units operated by the other board or boards;
- (c) the calculated enrolment of resident pupils in respect of whom the agreement or agreements are entered into is less than 300 and is less than 10 per cent of the total calculated enrolment of resident pupils of the board; and

- (d) ten or more ratepayers apply in writing to the board for the establishment of the English-language advisory committee.

Application
of ss. 260
to 273

- (3) Sections 260 to 273 apply with necessary modifications in respect of English-language advisory committees.

Definitions

- (4) In this section, “calculated enrolment”, “resident pupil” and “total calculated enrolment” have the same meanings as in Part XI-A.

7.—(1) Section 274 of the said Act is amended by striking out “In this Part” in the first line and inserting in lieu thereof “In this section and in sections 275 to 277b”.

(2) Clause 274 (b) of the said Act is amended by adding at the end thereof “and includes a French-language education council and an English-language education council under Part XI-B”.

Transition

8.—(1) Within two months after the date on which this section comes into force, every board that has a French-language advisory committee or an English-language advisory committee under Part XI of the *Education Act* and that is not required to establish a French-language education council or an English-language education council under Part XI-B shall establish by resolution a new French-language advisory committee or a new English-language advisory committee, as the case requires, in accordance with the *Education Act*, as amended by this Act, and when the new committee takes office, the previous committee is dissolved.

Definitions

(2) In subsection (1),

“board” has the same meaning as in Part XI-A of the *Education Act*, as enacted by section 9 of this Act;

“Part XI-B” means Part XI-B of the *Education Act*, as enacted by section 9 of this Act.

9. The said Act is amended by adding thereto the following Parts:

PART XI-A

GOVERNANCE OF FRENCH-LANGUAGE INSTRUCTION

Definitions

277c. In this Part,

“board” means a board of education, other than a board of education for an area municipality in The Municipality of Metropolitan Toronto, the members of which are elected under the *Municipal Elections Act*, a county or district combined Roman Catholic separate school board, the Metropolitan Separate School Board or The Windsor Roman Catholic Separate School Board;

R.S.O. 1980,
c. 308

“calculated enrolment”, in relation to resident pupils of a board, means the number of French-language resident pupils or the number of resident pupils other than French-language resident pupils, as the case requires, calculated by the Ministry under this Part;

“estimated revenues” means revenues from all sources receivable by a board as set out in the estimates prepared and adopted by the board;

“French-language”, in relation to a resident pupil, means a resident pupil enrolled in a French-language instructional unit;

“French-language instructional unit” means a class, group of classes or school under Part XI in which French is the language of instruction;

“regular election” has the same meaning as in the *Municipal Elections Act*;

R.S.O. 1980,
c. 308

“resident pupil”, in respect of a board, means a pupil who is registered on a register or registers prescribed by the Minister for the purposes of this Part and who,

(a) is qualified to be a resident pupil of the board and is enrolled in a school,

(i) operated by the board, or

(ii) operated by another board to which the first-mentioned board pays fees in respect of the pupil, or

(b) is not qualified by residence to be a resident pupil of a board but is enrolled in a school operated by the board,

(i) pursuant to section 45, or

(ii) where fees are required to be paid by or on behalf of the pupil by or under this Act other

than by another board, notwithstanding that the payment of all or a part of the fees is waived by the board that operates the school at which the pupil is enrolled;

“total calculated enrolment”, in relation to resident pupils of a board, means the total number of resident pupils of the board calculated by the Ministry under this Part.

French-language section

277d.—(1) Every board that operates a French-language instructional unit shall have a French-language section of the board.

300 resident pupils

(2) Every board that enters or has entered into an agreement or agreements with another board or boards to enable a calculated enrolment of at least 300 resident pupils of the board to receive instruction in one or more French-language instructional units operated by the other board or boards shall have a French-language section of the board.

10 per cent enrolment

(3) Every board that enters or has entered into an agreement or agreements with another board or boards to enable a calculated enrolment of at least 10 per cent of the resident pupils of the board to receive instruction in one or more French-language instructional units operated by the other board or boards shall have a French-language section of the board.

Minority

(4) Subsections (1) to (3) apply only if the calculated enrolment of French-language resident pupils of the board is a minority of the total calculated enrolment of resident pupils of the board.

Application of subss. (1) to (3)

(5) Subsections (1) to (3) apply only in respect of boards elected in and after the regular election in the year 1988.

Authority of French-language section

277e. The French-language section of a board shall govern for the board the French-language instructional units operated by the board.

Number of members of French-language section

277f.—(1) The number of members of the French-language section of a board shall be determined according to the following rules, which shall be applied in order beginning with rule 1:

1. The number of members of the French-language section shall bear the same ratio to the total number of members of the board that the calculated enrolment of resident pupils of the board enrolled in French-language instructional units operated by the

board bears to the total calculated enrolment of resident pupils of the board.

2. The total number of members of the board shall not be increased by the creation of the French-language section; the number of other members of the board shall be decreased by a number of members equal to the number of members of the French-language section.
3. If the number of members of the French-language section determined according to rule 1 is less than three, the French-language section shall be composed of three members.
4. If rule 3 applies to determine the number of members of the French-language section, the total number of members of the board shall be increased by the number of members equal to the difference between three members and the number of members of the French-language section determined according to rule 1.
5. The number of members of the French-language section determined according to rules 1 to 4 shall be corrected to the nearest integer, the fraction one-half being raised to the next higher integer.

(2) Where the areas to be represented by members of a board are fixed by or under this or any other Act or by or under a regulation under this or any other Act, the Minister, after considering the recommendations if any of the board, by order may prescribe the areas or the method of determining the areas to be represented by the members of the French-language section of the board and may make any change in the areas to be represented by one or more of the remaining members of the board that the Minister considers necessary in the circumstances.

Order by
Minister

277g. A person is qualified to be elected as a member of the French-language section of a board if,

Qualifications of
members of
French-
language
section

- (a) the person is qualified to be elected as a member of the board;
- (b) the person has the right under subsection 23 (1) or (2), without regard to subsection 23 (3), of the *Canadian Charter of Rights and Freedoms* to have his or her children receive their primary and sec-

ondary school instruction in the French language in Ontario; and

- (c) the person chooses to vote only for members of the French-language section of the board and not for any other member of the board.

Elector

277h.—(1) A person is qualified to be an elector in respect of a member of the French-language section of a board if,

- (a) the person is qualified to vote in a regular election of members of the board;
- (b) the person has the right under subsection 23 (1) or (2), without regard to subsection 23 (3), of the *Canadian Charter of Rights and Freedoms* to have his or her children receive their primary and secondary school instruction in the French language in Ontario; and
- (c) the person chooses to vote only for members of the French-language section of the board and not for any other member of the board.

Idem

(2) No person is entitled to vote in a regular election for both members of the French-language section of a board and other members of the board.

Election

277i.—(1) The members of the French-language section of a board shall be elected by a general vote of the persons qualified to vote for members of the French-language section of the board.

Time and
manner of
election

(2) The election of members of the French-language section of a board shall be held at the same time and in the same manner as the election of the other members of the board.

Vacancy

277j.—(1) If the office of a member of the French-language section of a board becomes vacant and the remaining members of the section constitute a majority of the members elected to the section, the remaining members of the section shall, at the first regular meeting of the section after the vacancy occurs, appoint to the office a person who is qualified to be elected as a member of the section.

Idem

(2) If the office of a member of the French-language section of a board becomes vacant and the remaining members of the section do not constitute a majority of the members elected to

the section, a new election shall be held to fill the vacancy or vacancies.

(3) A member of the French-language section of a board appointed under subsection (1) or elected under subsection (2) shall hold office for the remainder of the term of office of the membership of the board. Idem

277k.—(1) The following matters are within the exclusive jurisdiction of the French-language section of a board: Jurisdiction

1. The planning and establishment of French-language instructional units, including the preparation and submission of capital expenditure forecasts in respect of such units to the board for submission to the Ministry.
2. The administration and the closing of French-language instructional units.
3. The planning, establishment, implementation and maintenance of programs, other than the provision of religious education and religious exercises, for pupils enrolled in a French-language instructional unit or in an evening class where French is the language of instruction.
4. The recruitment and assignment of teachers and administrative and supervisory personnel for French-language instructional units.
5. Entering into agreements under section 159 (provision of accommodation or services to another board), 161 (furnishing or obtaining education for pupils) or 165a (adult basic education) in respect of pupils in French-language instructional units.

(2) The following matters are outside the jurisdiction of the French-language section of a board: Excluded matters

1. The planning and establishment of schools that are not French-language instructional units, including the preparation and submission of capital expenditure forecasts to the board for submission to the Ministry in respect of such schools.
2. The administration and the closing of schools that are not French-language instructional units.

3. The planning, establishment, implementation and maintenance of programs, other than the provision of religious education and religious exercises, for pupils enrolled in a school or class that is not French-language instruction units or in an evening class where French is not the language of instruction.
4. The recruitment and assignment of teachers and administrative and supervisory personnel for schools, classes and evening classes mentioned in paragraph 3.
5. Entering into agreements under section 159 (provision of accommodation or services to another board), 161 (furnishing or obtaining education for pupils), 163 (furnishing or obtaining secondary school education for pupils) or 165a (adult basic education) in respect of pupils in a school or class that is not under Part XI.

Common
jurisdiction

(3) In respect of all other matters, a member of the French-language section of a board has the same powers, duties, rights and responsibilities as a member of the board who is not a member of the French-language section.

Change of
jurisdiction

(4) If a majority of the members of the French-language section of a board and a majority of the other members of the board each resolve,

- (a) that a matter within the exclusive jurisdiction of the French-language section of the board shall be outside the jurisdiction of that section; or
- (b) that a matter outside the jurisdiction of the French-language section of the board shall be within the exclusive jurisdiction of that section,

subsections (1) and (2) shall be deemed to be modified accordingly in respect of the board, and the secretary of the board shall transmit to the Minister notice of the change of jurisdiction.

Application

2771.—(1) This section applies to every board that has a French-language section under this Part.

Idem

(2) This section applies in respect of the year 1989 and every subsequent year.

(3) After the estimates of the board in respect of a year are approved or adopted, as the case requires, the board shall allocate the amounts of its estimated revenues for the year as follows:

Allocation
of estimated
revenues

1. Firstly, to the specific educational programs or specific schools or classes that generated a portion of the estimated revenues, in amounts equal to the amounts generated.
2. Secondly, to the centralized services of the board, in amounts equal to the amounts set out for the centralized services in the estimates.
3. Thirdly, to all the schools and classes operated by the board.

(4) The board shall allocate the estimated revenues under paragraph 3 of subsection (3) to the schools and classes that are French-language instructional units in the ratio that the average daily enrolment in those schools and classes is to the average daily enrolment of the board in all schools and classes mentioned in the paragraph.

Schools
and
classes

(5) The board shall allocate the estimated revenues under paragraph 3 of subsection (3) to the balance of the schools and classes that are not French-language instructional units in the ratio that the average daily enrolment in those schools and classes is to the average daily enrolment of the board in all schools and classes mentioned in the paragraph.

Balance
of schools
and classes

(6) In this section, “centralized services” means,

Definition

- (a) salaries, benefits and professional development of employees other than employees whose recruitment and assignment is specified in this Part as either within or outside the exclusive jurisdiction of the French-language section of the board;
- (b) normal maintenance of and operational services and equipment required for school sites;
- (c) school supplies other than instructional and learning materials;
- (d) transportation of pupils to and from school and from school to school;
- (e) allocation to reserve funds and the reserve for working funds;

- (f) establishment and maintenance of the head office of the board, including services operated therefrom;
- (g) permanent improvements other than the replacement for schools and classes of furniture, furnishings, library books and instructional equipment and apparatus; and
- (h) expenditures that are not within clauses (a) to (g) but that are approved from time to time by the board.

Duty of
board

277m.—(1) Every board shall ensure that the matters that are within the exclusive jurisdiction and the matters that are outside the jurisdiction of the French-language section of the board are properly provided for when the board prepares and adopts its estimates and when the board allocates its estimated revenues.

Variation

(2) Subject to subsection (1), a board may vary an allocation in order to accommodate a change in circumstances or assumptions upon which the estimates of the board were made.

Annual
filing by
boards

277n.—(1) Every board shall file annually with the Ministry a report in the prescribed form in respect of the enrolment of resident pupils of the board in schools and classes operated as French-language instructional units and in respect of the enrolment of resident pupils of the board in schools and classes not operated as French-language instructional units.

Counting
date

(2) Every board shall compile the data mentioned in subsection (1) as of the 30th day of September in each year, commencing as of the 30th day of September, 1985.

Calculations
by Ministry

277o.—(1) The Ministry shall calculate the calculated enrolment of French-language resident pupils, the calculated enrolment of resident pupils other than French-language resident pupils and the total calculated enrolment of resident pupils of each board.

Idem

(2) From the enrolments calculated under subsection (1), the Ministry shall calculate the number of members to be elected to the French-language section of each board in the next regular election.

Additional
factor in
calculations

(3) In order to allow for statistical inaccuracies, the Ministry shall calculate a calculated enrolment of French-language resident pupils,

- (a) that is not less than 9.50 per cent and not more than 10 per cent of the calculated enrolment of resident pupils of a board as 10 per cent of the calculated enrolment of resident pupils of the board; and
- (b) that is not less than 285 and not more than 300 resident pupils of the board as 300 resident pupils of the board.

(4) For the purposes of the regular election in the year 1988, the calculations under subsections (1) and (2) shall be based upon the enrolment of resident pupils of the board as of the 30th day of September, 1987.

Election
in 1988

(5) For the purposes of a regular election held after 1988, the calculations under subsections (1) and (2) shall be based upon the enrolment of resident pupils of the board as of the 30th day of September in the year immediately preceding the year in which the regular election is held.

Regular
elections

(6) Where members are to be elected to the French-language section of a board, the Minister, before the 1st day of July in the year in which the election is to be held,

Notice to
boards and
returning
officers

- (a) shall notify the board and the Commission of the results of the calculations under subsections (1) and (2);
- (b) shall notify the proper returning officer of the number of members to be elected to the French-language section of the board;
- (c) shall notify the appropriate assessment commissioners; and
- (d) shall give public notice that the board qualifies under this Part to have a French-language section and of the number of members to be elected to the French-language section of the board.

(7) A board or the Commission or a committee may appeal the accuracy of the calculations under subsections (1) and (2) to the Minister by application made not later than the 15th day of July in the year in which the election is to be held.

Application
to Minister

(8) The Minister shall appoint a person to hear and consider the matter and report to the Minister, and the Minister shall make such changes in the calculations as are recommended in the report.

Hearing and
decision

Further
notice

(9) The Minister,

- (a) shall notify the board of any changes in the results of the calculations;
- (b) shall notify the proper returning officer of any change in the number of members to be elected to the French-language section of the board;
- (c) shall notify the appropriate assessment commissioners; and
- (d) shall give public notice of any change in the qualification of the board to have a French-language section or in the number of members of the French-language section of the board,

consequent upon the report to the Minister.

Definitions

(10) In this section, “Commission” and “committee” have the same meanings as in section 274.

Liaison
committee

277p.—(1) Two or more boards, upon the request of the French-language sections of the boards, may establish a liaison committee.

Function

(2) A liaison committee may consider and make recommendations to the French-language section of a board on any matter that the board agrees may be referred to the liaison committee.

Dissolution
of section

277q.—(1) If a board ceases to meet the conditions of this Part under which a board must have a French-language section, the Minister by order may dissolve the French-language section of the board.

Establish-
ment of
committee

(2) If the Minister makes an order under subsection (1), the board shall establish the committee in accordance with Part XI within two months after the date on which the French-language section of the board is dissolved.

English as
language of
instruction

277r.—(1) There shall be an English-language section of a board and this Part shall apply with necessary modifications in respect of the board and in respect of the English-language section of the board if the calculated enrolment of English-language resident pupils of the board is a minority of the total calculated enrolment of the resident pupils of the board and,

- (a) the board operates an English-language instructional unit under Part XI;

- (b) the board enters or has entered into an agreement or agreements with another board or boards to enable a calculated enrolment of at least 300 resident pupils of the board to receive instruction in one or more English-language instructional units operated by the other board or boards; or
- (c) the board enters or has entered into an agreement or agreements with another board or boards to enable a calculated enrolment of at least 10 per cent of the resident pupils of the board to receive instruction in one or more English-language instructional units operated by the other board or boards.

(2) For the purposes of subsection (1),

Interpretation

- (a) a reference in this Part to French, other than in this subsection, shall be deemed to be a reference to English;
- (b) a reference in this Part to French language shall be deemed to be a reference to English language; and
- (c) a reference in this Part to a person who has the right under subsection 23 (1) or (2), without regard to subsection 23 (3), of the *Canadian Charter of Rights and Freedoms* to have his or her children receive their primary and secondary school instruction in the French language in Ontario shall be deemed to be a reference to a person who does not have that right and to be a reference to a person who has but elects not to exercise that right.

(3) Subsection 227o (3) applies with necessary modifications for the purposes of subsection (1).

Additional
factor in
calculations

277s.—(1) The Minister may prescribe the form of the report under subsection 277n (1) and require its use for the purposes of this Part.

Forms

(2) An act of the Minister under subsection (1) is not a regulation within the meaning of the *Regulations Act*.

Application
of
R.S.O. 1980,
c. 446

PART XI-B

INTERIM GOVERNANCE OF FRENCH-LANGUAGE INSTRUCTION

277t. In this Part, “board”, “calculated enrolment”, “French-language”, in relation to a resident pupil, “French-

Definitions

language instructional unit”, “resident pupil” and “total calculated enrolment” have the same meanings as in Part XI-A.

French-
language
education
council

277u. Every board that operates a French-language instructional unit shall have a French-language education council if the calculated enrolment of French-language resident pupils of the board is a minority of the total calculated enrolment of resident pupils of the board.

Number of
members of
French-
language
education
council

277v.—(1) The number of members of the French-language education council of a board shall be determined according to the following rules, which shall be applied in order beginning with rule 1:

1. The number of members of the French-language education council shall bear the same ratio to the total number of members of the board that the calculated enrolment of resident pupils of the board enrolled in French-language instructional units operated by the board under Part XI bears to the total calculated enrolment of resident pupils of the board.
2. The French-language education council shall be composed of those members of the board who are eligible to be members of and who elect in writing to sit as members of the French-language education council.
3. All of the members of the board who are eligible to be and who elect in writing to sit as members of the French-language education council are entitled to do so even if the number of such members is greater than the number of members determined according to rule 1.
4. If the number of eligible members of the board who elect in writing to be members of the French-language education council is less than the number of members determined according to rule 1, the additional membership of the French-language education council shall be made up by members elected in the same manner as members of a committee under Part XI.
5. If the number of members of the French-language education council determined according to rule 1 is less than three, the French-language education council shall be composed of three members.

6. If rule 5 applies to determine the number of members of the French-language education council, the total number of members of the board shall be increased by the number of members equal to the difference between three members and the number of members of the French-language education council determined according to rule 1.

(2) If a board is required to have a French-language education council, every member of the board who has the right under subsection 23 (1) or (2), without regard to subsection 23 (3), of the *Canadian Charter of Rights and Freedoms* to have his or her children receive their primary and secondary school instruction in the French language in Ontario is eligible to be a member of the French-language education council.

Qualified
members of
board

(3) A person is qualified to be elected as a member of the French-language education council if,

Qualifi-
cations for
election

- (a) the person is eligible to be elected as a member of the board; and
- (b) the person has the right under subsection 23 (1) or (2), without regard to subsection 23 (3), of the *Canadian Charter of Rights and Freedoms* to have his or her children receive their primary and secondary school instruction in the French language in Ontario.

(4) For the purpose of rule 1 of subsection (1), the calculated enrolment of resident pupils of the board enrolled in French-language instructional units operated by the board under Part XI and the total calculated enrolment of resident pupils of the board are the numbers determined under Part XI-A as of the 30th day of September, 1985.

Calculated
enrolments

277w.—(1) The French-language education council of a board has exclusive jurisdiction over the same matters as are specified for the French-language section of a board under Part XI-A.

Jurisdiction

(2) The matters that are outside the jurisdiction of the French-language section of a board under Part XI-A are also outside the jurisdiction of the French-language education council of a board.

Excluded
matters

(3) In respect of all other matters, a member of the French-language education council of a board has the same powers, duties, rights and responsibilities as a member of the board

Common
jurisdiction

who is not a member of the French-language education council.

Allocation of
estimated
revenues

277x. Every board that has a French-language education council shall allocate its estimated revenues in the same manner as is specified for a board that has a French-language section under Part XI-A.

English as
language of
instruction

277y.—(1) There shall be an English-language education council of a board and this Part shall apply with necessary modifications in respect of the board and in respect of the English-language education council of the board if the calculated enrolment of English-language resident pupils of the board is a minority of the total calculated enrolment of the resident pupils of the board and the board operates an English-language instructional unit under Part XI.

Interpretation

(2) For the purposes of subsection (1),

- (a) a reference in this Part to French, other than in this subsection, shall be deemed to be a reference to English;
- (b) a reference in this Part to French language shall be deemed to be a reference to English language; and
- (c) a reference in this Part to a person who has the right under subsection 23 (1) or (2), without regard to subsection 23 (3), of the *Canadian Charter of Rights and Freedoms* to have his or her children receive their primary and secondary school instruction in the French language in Ontario shall be deemed to be a reference to a person who does not have that right and to be a reference to a person who has but elects not to exercise that right.

10.—(1) Section 19 of the *Municipal Elections Act*, being chapter 308 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following clause:

- (f) who is a separate school elector or a public school elector, that the elector has chosen to vote to elect members of the French-language section, or the English-language section, of a board under Part XI-A of the *Education Act*.

R.S.O. 1980,
c. 129

(2) Subsection 49 (1) of the said Act is amended by adding thereto the following paragraph:

- 6a. Where the election is to the French-language section, or the English-language section, of a board under Part XI-A of the *Education Act*, an elector is entitled to as many votes as there are members of the French-language section or the English-language section, as the case may be, of the board but may not give more than one vote to any one candidate. R.S.O. 1980,
c. 129

11. Part XI-B, as enacted by section 9 of this Act, is Repeal
repealed on the 1st day of December, 1988.

12. This Act comes into force on the day it receives Royal Commence-
Assent. ment

13. The short title of this Act is the *Education Amendment* Short title
Act, 1985.



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